Invitation to Bid

Electronic bids will be accepted by the State Engineer on behalf of the South Dakota Department of Veteran's Affairs at https://www.sd.gov/cs?id=sc_cat_item&sys_id=d1b20116db40135091ce9f95f39619b8 until November 19, 2026 at 3:00pm MT for the MJF, Replace Flooring, State Veteran's Home, Hot Springs, South Dakota, OSE# N1826--02X/SWMR.

There will be an on-site pre-bid meeting on November 5, 2026 at 10:00am MT. All bidders can meet at MJF Building main entrance. This pre-bid meeting is optional but is the bidders only opportunity to review the site. Campus contact is Chris McClure, (605)-891-8374, Christopher.McClure@state.sd.us. OSE contact is Steve Mezger, steve.mezger@state.sd.us.

Copies of the Plans and Specifications may be obtained by bidders at the office of Office of the State Engineer, 523 Capitol Ave., Pierre, SD 57501. A/E Contact: Steve Mezger, 605.280.4526, steve.mezger@state.sd.us. Anyone requesting, reviewing, or copying Plans and Specifications for this project agrees that they are doing so for the sole purpose of submitting a bid on the project. Bidder further agrees the Plans and Specifications are the sole property of the State;

Each bid in excess of $100,000.00 must either pre-mail a certified check, cashier's check, or draft in the amount of 5% of the base bid and all add alternates and drawn on a State or National Bank to the Office of the State Engineer, Joe Foss Building, 523 East Capitol Ave, Pierre, SD 57501-3182, or upload a copy of their 10% bid bond to their electronic bid issued by a surety authorized to do business in the State of South Dakota and made payable to the Bureau of Human Resources and Administration of the State of South Dakota. The BHRA reserves the right to reject any or all bids and to waive any irregularities therein. All active bids can be found here: https://www.sd.gov/bhra?id=cs_kb_article_view&sysparm_article=KB0044739

Office of the State Engineer

Published twice at the total approximate cost of_____.

PROJECT MANUAL

MJF, REPLACE FLOORING
STATE VETERAN'S HOME
HOT SPRINGS, SD
OSE# N1826--02X/SWMR

Prepared By

BUREAU OF HUMAN RESOURCES AND ADMINISTRATION
OFFICE OF THE STATE ENGINEER

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3182
605-773-3466
STACY WATTERS, P.E.
STATE ENGINEER

State of SouthDakota
OFFICE OF THE STATE ENGINEER

This Project Manual provides for liquidated delay damages in the amount of **$500.00 per calendar day after the Substantial Completion date of May 28, 2027** for the Contractor's delay in completion of the work.
See the Bid Form and Article 10 of the General Conditions for details.

OCTOBER 30, 2026

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FOR

STATE SPECIFICATION

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SPECIAL CONDITIONS, TECHNICAL SPECIFICATIONS

AND PLANS

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INVITATION TO BID

Invitation to Bid

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Each bid in excess of $100,000.00 must either pre-mail a certified check, cashier's check, or draft in the amount of 5% of the base bid and all add alternates and drawn on a State or National Bank to the Office of the State Engineer, Joe Foss Building, 523 East Capitol Ave, Pierre, SD 57501-3182, or upload a copy of their 10% bid bond to their electronic bid issued by a surety authorized to do business in the State of South Dakota and made payable to the Bureau of Human Resources and Administration of the State of South Dakota. The BHRA reserves the right to reject any or all bids and to waive any irregularities therein. All active bids can be found here: https://www.sd.gov/bhra?id=cs_kb_article_view&sysparm_article=KB0044739

Office of the State Engineer

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BIDDER'S CHECKLIST

The following items need to be submitted along with your bid, via the electronic bidding platform. All bids and any modifications to bids must be in the hands of the State Engineer or the State Engineer's representative, via the electronic bidding platform, on or before the time set for opening bids in the Invitation for Bids.

- ☐ All blanks on the electronic Bid Form are filled in.
- ☐ Receipt of all addenda is noted on the electronic Bid Form.
- ☐ Bid Form is electronically signed by an officer of the corporation or, if not a corporation, a proprietor or partner.
- ☐ For bids of $100,000.00 or higher, a copy of the bid bond or security is submitted with the electronic bid and is mailed to the Office of the State Engineer.
- ☐ If a foreign contractor, a fully executed "Non-Resident Bidder Affidavit" is submitted with the bid.

ASBESTOS STATEMENT

ASBESTOS CONTAINING MATERIALS CAUTION:

It is brought to the contractor's attention that asbestos containing materials (greater than 1%) may be present outside the project requirements yet within the building or area. The contractor shall take the necessary precautions so as not to disturb this material. If asbestos containing materials are disturbed, the contractor shall follow and comply with the state rules promulgated under SDCL 34-44 pertaining to asbestos, and 29 CFR 1926.58, 40 CFR Part 61, 40 CFR Part 763 as in effect and the United States Environmental Protection Agency publication entitled "Guidance for Controlling Asbestos Containing Materials in Buildings" (EPA 560/5-85-024, June 1985).

ASBESTOS CONTAINING MATERIALS STATEMENT:

In accordance with the provisions of SDCL 34-44-8, all bidders and contractors are hereby notified that to the best knowledge of the owner or those representing him in any capacity, this project **does not** involve asbestos containing materials (greater than 1%). Bidders are further instructed that no asbestos containing materials are to be installed in this project.

The contractor is cautioned that hidden materials unknown to the owner and inaccessible for testing may be found during the demolition work of this project which may be asbestos containing materials. Proper procedures shall be followed upon discovery of these materials. The owner or those representing the owner in any capacity shall not be held responsible or liable for any injury or cost to any person resulting from handling of or proximity to such materials.

ASBESTOS LIABILITY STATEMENT

In accordance with amended SDCL 34-44, neither the owner, employees, or agents of the owner, nor any other person may have any claim, right or action against the prime contractor for any asbestos related injury or damage arising from the activities of a certified asbestos abatement subcontractor. Unless exempt under applicable state and federal law, no asbestos abatement work may be performed except by a certified asbestos contractor. A certified asbestos abatement subcontractor shall hold the owner and general contractor harmless from any liability arising from such subcontractor's activities on the project. A certified asbestos abatement contractor shall cause the owner and, if acting as a subcontractor, the general contractor to be named as additional insureds and provide sufficient proof of insurance for purposes of this section.

INSTRUCTIONS TO BIDDERS

Instructions to Bidders

1. Examination of Plans, Specifications and Site.

Bidders should carefully examine the site of the proposed work, subsurface conditions, the Plans and Specifications, and the bid and contract documents governing the project. The submission of bids is conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be encountered; the character, quality, and scope of the proposed work; the quality and quantity of the materials to be furnished; and the requirements of the bid, the Plans and Specifications, and the other Contract Documents.

The Plans and Specifications are to be used only with respect to this project and are not to be used for any other project or purposes other than preparing a bid for this project; the Plans and Specifications will not be disseminated to any person or entity for purposes other than obtaining pricing information without the express written approval of the state; all information contained in the Plans and Specifications is confidential; and should the bidder disseminate the Plans and Specifications to an individual or entity for purposes of obtaining pricing information, the bidder will require that individual or entity to adhere to the terms set forth herein. The bidder, however, assumes no liability for the misuse of the Plans and Specifications by such third party or such third party's failure to comply with the provisions contained herein.

Any copies of the Plans and Specifications obtained directly from the State will be returned to the office of the Architect/Engineer immediately after the State provides notice that bidder will not be awarded a contract, or thirty (30) days after the bid opening for the project, whichever occurs first. Any copies of the Plans and Specifications made by the bidder will be destroyed immediately after the State provides notice that bidder will not be awarded a contract, or thirty (30) days after the bid opening for the project, whichever occurs first. If bidder does not submit a bid, bidder will fulfill the requirements previously outlined on or before the date of the bid opening. Should bidder be awarded a contract for construction of the project, bidder does not need to return or destroy Plans and Specifications until after completion of the project.

2. Submission of Bids.

Each bid must:

a. Be submitted via the electronic bidding platform;

b. Include any addenda issued during the time of advertising for bids the same as though it had been included in the original Plans and Specifications; and

All bids and any modifications to bids must be in the hands of the State Engineer or the State Engineer's representative, via the electronic bidding platform, on or before the time set for opening bids in the Invitation for Bids. Bids will not be received after the time for bid opening.

3. Modification of Bids.

a. Bids may be modified, via the electronic bidding platform, at any time, not later than the time set for the opening of bids. No bid made shall be changed or altered by telephone. No oral changes, alterations or conditions will be accepted under any circumstance.

4. Contractor's Qualification Statement.

For bids of $100,000.00 or more, the low bidder, upon request, must submit to the Office of the State Engineer, within 48 hours of said request, Contractor's Statement of Skills and Capabilities (Exhibit "F"). The Contractor's Qualification Statement (AIA Document A305) or the AGC's Contractor Qualification Statement may be used provided it includes all the information required by the OSE document, minus the financial statement.

5. Bid Security.

Each bid over $100,000.00 must be accompanied by a bid security as follows:

a. Certified Check, Cashier's Check or Draft. A certified check, cashier's check or draft for five percent (5%) of the amount of the bid, including all add alternates, such check to be certified or issued by either a State or National Bank and payable to said public corporation or officer. A certified check, cashier's check or draft shall be received at the Office of the State Engineer no later than the date and time of the bid opening.

b. Bid Bond. In lieu of a certified check as a bid guarantee, a bid bond of ten percent (10%) of the total amount of the bid, including all add alternates, may be furnished by the Contractor. See Exhibit "C" for Bid Bond form. Such bond to be issued by a surety authorized to do business in the State of South Dakota. Such bond shall be payable to said public corporation or officer as guaranty that such bidder will enter into a contract with said public corporation, its Board or officers thereof, in accordance with the terms of such letting and bid in case such bidder be awarded the contract. A copy of the bid bond shall be attached to the bid, via the electronic bidding platform.

No bidder shall be required to leave his/her certified check or other guaranty or bid bond posted for a longer period than thirty (30) days if the bid is not accepted. The certified check or other guaranty of the successful bidder shall be returned to him forthwith upon the execution of the contract and surety herein provided for.

6. Withdrawal of Bids.

Any bid may be withdrawn, via the electronic bidding platform, at any time before the time specified in the advertisement therefor. Withdrawal of a bid does not prejudice a bidder's right to submit a new bid within the time designated for the submission of bids. No bids may be withdrawn after the time designated in the Invitation to Bid for the opening of bids.

7. Request for Interpretation.

Any person who plans to bid on the project may submit to the Owner a written request for an interpretation of any part of the Plans and Specifications or Contract Documents. Requests for interpretations shall be made not less than ten (10) days prior to the opening of bids. Any interpretation will be in writing and furnished to each person receiving Plans and Specifications for bidding. The Owner will not be responsible for any other explanation or interpretation.

8. Or Equal Clause.

Whenever a material, article, or piece of equipment is identified on the Plans or in the Specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and any materials, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the requirements of Article 6.3.4 of the General Conditions are met and the material, article, or equipment so proposed is, in the opinion of the Architect and State Engineer, of equal substance and functions.

9. Preference for South Dakota Products, Labor and Materials.

By virtue of statutory authority in SDCL § 5-18A-6(10) et seq. preference will be given to South Dakota products, labor and materials as provided by law.

10. Opening of Bids.

Bids will be received until the time for opening designated in the Invitation to Bid. All bids received within the designated time will be opened and read aloud at the time and place designated in the Invitation to Bid. Bidders and their authorized agents are invited to attend in person or online.

11. Relief from Mistake in Bid.

A bidder claiming a mistake in a bid must give the State written notice of the alleged mistake within five calendar days after the bids are opened, specifying in detail how the mistake occurred. Relief will only be granted for clerical or mathematical mistakes which can be documented to the satisfaction of the State Engineer.

12. Consideration of Bids.

At the time of opening bids, the State will verify ~~the bidder is prequalified for the specified work type and~~ the bidder's bidding capacity at that time is sufficient to handle the work for which the bidder submitted a bid proposal. The State reserves the right to refuse to accept a bid for any of the following reasons:

~~a. Lack of competency or adequate machinery, plant, or other equipment, as shown by the Contractor's Prequalification Statement;~~

b. Uncompleted work which the State determines, in its sole discretion, may hinder or prevent the prompt completion of additional work;

c. Failure to pay or satisfactorily settle any legal obligation due for labor or material on any contract at the time of issuance of bid;

~~d. Failure to comply with the State's prequalification regulations;~~

e. Default under any previous contract or contracts;

f. Debarment by the State or the federal government;

g. Disqualification by the State. The following reasons will be considered sufficient for disqualifying a bidder and rejecting the bid or bid proposals:

    1. Submittal of more than one bid for the same work from an individual, firm, or corporation under the same or different name; or,

2. Evidence of collusion among bidders. A participant in collusion will not receive recognition as a bidder for future work with the State until reinstated as a qualified bidder;

~~h. Lack of overall bidding capacity as established by the Contractor's prequalification statement, considering the uncompleted work currently under contract;~~

~~i. Lack of per contract bidding capacity as established by the Contractor's prequalification statement; or~~

j. Unsatisfactory performance on previous work or any current contract or contracts consisting of, but not limited to:

1. Noncompliance with contract specifications, contract requirements, or Engineer's directives;

2. Failure to complete work on time;

3. Instances of substantial corrective work prior to acceptance;

4. Instances of completed work that requires acceptance at reduced pay;

5. Production of work or materials not meeting required specifications, and when applicable, requiring price reductions or corrective work;

6. Failure to provide adequate safety measures or appropriate traffic control that endangers the safety of the work force and public;

7. Questionable moral integrity as determined by the Attorney General of the State, or the State; or,

8. Failure to reimburse the State for monies owed on any previously awarded contract including any contract where the prospective bidder is a party to a joint venture and the joint venture has failed to reimburse the State for monies owed.

After opening, the State will compare the bids on the basis of the summation of the products of the quantities shown in the bid by the lump sum, and/or alternates, and/or unit bid prices. The State will make results of such comparisons available to the public. In the event of a discrepancy between unit bid prices and extensions, the unit bid price will govern.

The State reserves the right to reject any bid(s), the right to waive technicalities, and the right to reject all bids and advertise for new bids, if in the sole judgment of the State the rejection or waiver will promote the best interest of the State.

13. Rejection of Bids.

Bids may be rejected if they show any alteration of form, additions not called for, conditional bids, incomplete bids, unexplained erasures, or irregularities of any kind. The State may waive any informality in the bids received. When bids are signed by an agent other than an authorized corporate officer or member of a partnership, a power of attorney must be filed with the bid. Otherwise, the bid will be rejected as irregular and unauthorized. If there is reason to believe that collusion among the bidders exists, any or all bids may be rejected. The State reserves the right to reject all bids if in the judgment of the State Engineer it is in the best interest of the State.

14. Award of Contract.

If the contract is awarded, it will be awarded to the responsible bidder submitting the lowest bid, subject to paragraph 18 below, which complies with the Invitation to Bid and with these instructions. The successful bidder will be notified within thirty (30) calendar days of the date bids are opened. Subsequent to notice of award, the successful bidder will be presented with a contract agreement. The contract will require the completion of work according to the Plans and Specifications and the Contract Documents. Conditional bids will not be accepted.

15. Responsibility.

The Owner may make such investigations as he/she deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.

16. Nonresident Bids.

SDCL § 5-18A-26, provides that the Contract shall be let to the lowest responsible bidder; provided, however, a resident bidder may be allowed a preference on any such contract as against the bid of any bidder from any other State or foreign province which enforces or has a preference for resident bidders. The amount of the preference given to the resident bidder shall be equal to the preference in the other state.

17. Subcontractor Certification.

SDCL§ 5-18B-6, provides that prior to execution of a public improvement project a successful bidder shall certify on the prescribed form (Exhibit "G"):

(1) That no more than twenty-percent of the cost of labor included in the contract is being provided by nonresident subcontractors; or

(2) That more than twenty percent of the cost of labor included in the contract is being provided by nonresident subcontractors because resident contractors are not available and at competitive prices.

18. Method of Award.

a. Bidding procedure involving only a base bid: If the base bid is within the amount of funds available to finance the construction contract, then contract award will be made to that responsible bidder submitting the low base bid. If the low bid exceeds the funds available to finance the construction, the State may negotiate with the low bidder to produce a bid amount within the availability of funds.

b. Bidding procedure involving a base bid and alternate bids: If the base bid is within the amount of funds available to finance the construction contract and the Owner wishes to accept alternate bids, then contract award will be made to that responsible bidder submitting the low combined bid, consisting of the base bid and any combination of add or deduct alternative bids found to be most advantageous to the Owner. Under this procedure, if the Owner wishes to make award on low base bid only, then contract award will be made to that responsible bidder submitting the low base bid. If the low bid exceeds the funds available to finance the construction, the State may negotiate with the low bidder to produce a bid amount within the availability of funds.

19. Execution of Agreement.

Within ten (10) calendar days after the proposed contract agreement is presented to the successful bidder for execution, the successful bidder must execute the contract documents and, *if the Contract is for more than $100,000.00*, provide a performance and labor and material payment bond.

20. Performance & Labor and Material Payment Bond.

If the Contract is for more than $100,000.00, provide a performance and labor and material payment bond produced by a South Dakota licensed insurance producer (agent) and issued by a South Dakota licensed surety in an amount not less than the amount of the awarded contract. The performance and labor and material payment bond Surety or Sureties shall meet all requirements of South Dakota Law.

This bond is to secure the faithful performance of the contract and the payment of those to whom the bidder may become legally indebted for labor, materials, tools, equipment, or services of any kind used or employed by the bidder in performing the work. The surety bond shall be on the form attached hereto as Exhibit "D". *(Failure on the part of the bidder to furnish such bond in the time stated shall be cause for consideration by the State of awarding the Contract to the second low bidder and the retention of the bid deposit.)*

21. Power of Attorney.

Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

22. Default.

The failure to execute the contract documents or to furnish bonds required by these instructions within ten (10) calendar days after the proposed contract agreement is presented for execution constitutes a default. In the event of a default, the State may award the contract to the next lowest bidder or may re-advertise for bids. The State may charge against the defaulting bidder the difference between the amount of the bid and the amount for which a contract for the work is subsequently executed plus the State's additional administrative cost necessitated by the bidder's failure to execute the Contract Documents, irrespective of whether the amount thus due exceeds the amount of the bid bond. If a more favorable bid is received by re-advertising, the defaulting bidder shall have no claim against the State for a refund.

23. Commencement of Work/Time of Completion.

The contractor for the general construction shall commence work under the contract within ten (10) consecutive calendar days after issuance of written Notice to Proceed and shall substantially complete all work under the contract within the timeframe specified in the Bid Form.

24. Liquidated Damages.

See Article 10.3.4 of the General Conditions.

25. Applicable Laws and Regulations.

The bidder's attention is directed to the fact that all applicable South Dakota laws, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout and they will be deemed to be included in the contract the same as though herein written out in full.

26. South Dakota Tax Information for Public Contracts.

Contractors performing public contracts in South Dakota may become responsible for two types of taxes: the excise tax upon realty improvement contracts and the sales/use tax upon materials.

All contractors must secure a license from the Department of Revenue before engaging in the construction activities in this State. Detailed information on tax requirements may be obtained from the Department of Revenue, Anderson Building, Pierre, South Dakota 57501. Telephone 605.773.3311.

27. Applicable Standards.

In addition to codes, Standards and Regulations referenced for compliance in the various sections of the Specifications, the work shall be in compliance with the following:

ANSI Z53.1 - 1971, and as revised
Safety color code for marking physical hazards.

ANSI A13.1 - 1975, and as revised
Scheme for the identification of piping systems.

ANSI C2, and as revised
National Electrical Safety Code.

28. Affirmative Action Plan.

The State of South Dakota requires that all contractors, vendors, and suppliers, employing fifty or more persons, doing business with any State Agency, Department, or Institution, place on file a statement of Affirmative Action that said contractor, vendor, or supplier does not discriminate in its employment practices with regard to race, color, religion, sex or national origin.

No award of any contract with the State of South Dakota shall be executed or awarded and approved by the State for any service, supply, or commodity unless the successful bidder submits such statement.

Above statement may be submitted to the State Engineer with the contractor's bid, or prior to award of contract.

29. Procurement Law.

This project is subject to the provisions of SDCL § 5-18A and 5-18B et seq.

EXHIBIT “A”

BID FORM

BID FORM

All bids shall be submitted via the OSE Electronic Bidding Platform, details below:



OSE Electronic Bidding

Submit Bid

Overview

The undersigned, being familiar with the local conditions affecting the work, and with the Contract Documents, including the Invitation to Bid, Instructions to Bidders, Bid Form, Explanation of Alternates, Modification to Bid Form, Bid Bond Form, Performance and Payment Bond, Acknowledgment of Surety, Sample Certification of Surety, Non-Resident Bidder Affidavit, Form of Agreement for Construction, General Conditions, Special Conditions, Technical Specifications, Plans and Addenda which govern the purchase of material and labor and the awarding of contracts hereby proposes to do all the work and provide all the material and equipment for the project.

Bid Opening Date:	**November 19, 2026**	
Bid Opening Time:	**3:00pm MT**	
Date of Project Manual:	**October 30, 2026**	
Date of Plans:	**October 30, 2026**	
Substantial Completion Date:	**May 28, 2027**	w/ Liquidated Damages: **$500.00** per calendar day
Final Completion Date:	**June 11, 2027**	w/ Liquidated Damages: **$500.00** per calendar day

Total value of material subject to tax: **0.00**

Any material furnished by the State for use in this project is subject to Use Tax and Excise Tax.

Link to Bidding: https://www.sd.gov/cs?id=sc_cat_item&sys_id=d1b20116db40135091ce9f95f39619b8

ATTENTION BIDDERS!

- ***TECHNICAL DIFFICULTIES:*** *OSE is not responsible for technical difficulties resulting from the electronic bidding platform.*
- ***MODIFY BIDS:*** *It is highly recommended that contractors submit their bid early and modify as needed prior to the bid closing. Please note, bids may be modified as many times as desired prior to the bid opening date/time as well as withdrawn at any point prior to the bid opening.*
- ***SESSION TIMEOUT:*** *The online bidding platform session will timeout if left open for too long, therefore bids need to be submitted in a timely manner as to ensure the information is not lost and other errors do not occur.*

EXHIBIT “B”

ELECTRONIC BIDDING INSTRUCTIONS

BUREAU OF ADMINISTRATION

Office of the State Engineer
523 East Capitol Ave. Pierre, South Dakota 57501
605.773.3466 / http://boa.sd.gov/state-engineer

May 9, 2022

RE: ELECTRONIC BIDDING

The State of South Dakota, Office of the State Engineer (OSE), has switched to an electronic bidding platform! Please find below screen shots and information on submitting an electronic bid.

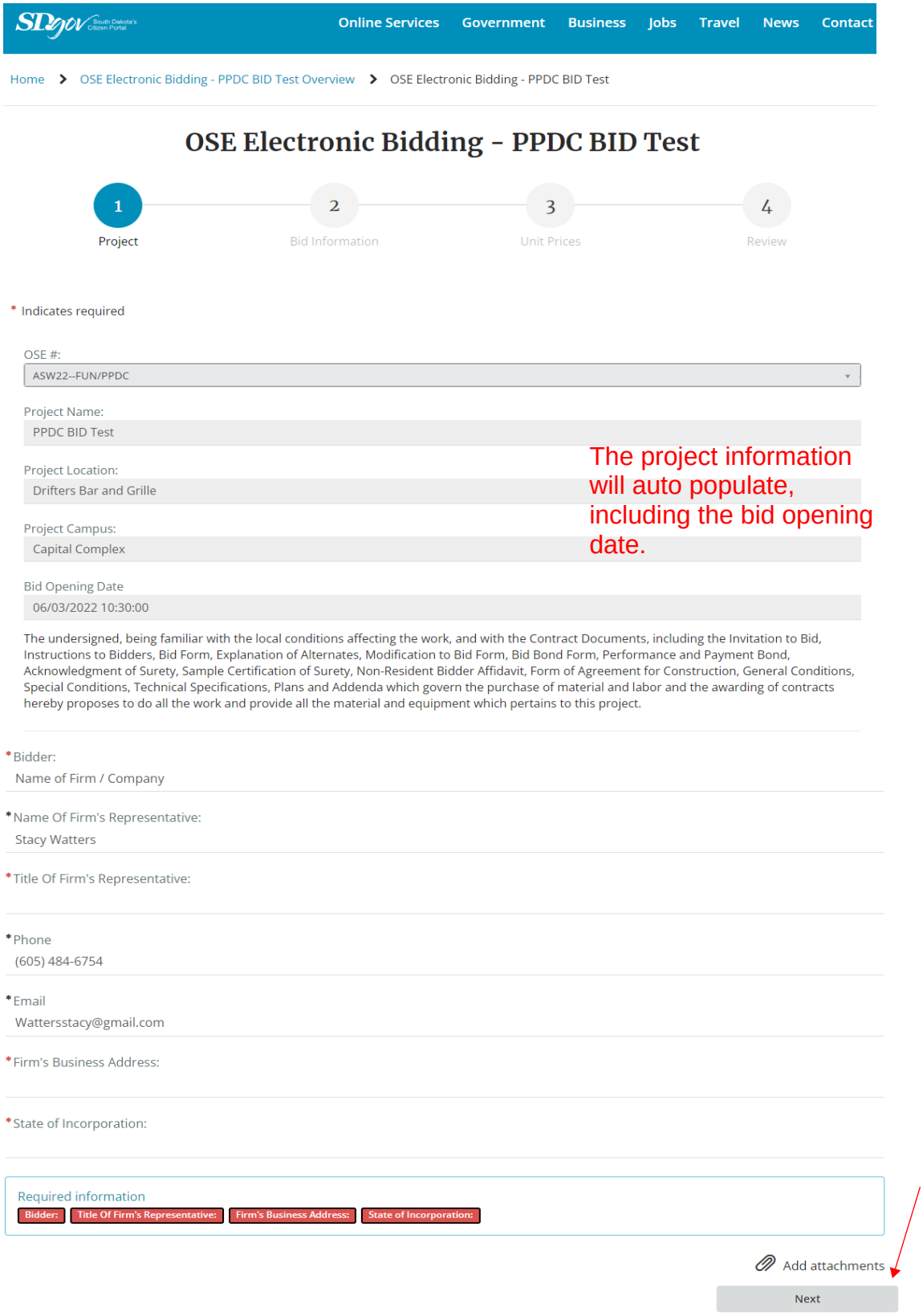
The State of SD has switched to a "single sign on" platform for all State services. Therefore, the username and password you use for purchasing a SD hunting or fishing license would be the same username and password you would use to submit an electronic bid on an OSE project. We just want you to be cognizant of that as you set up your SD.gov account.

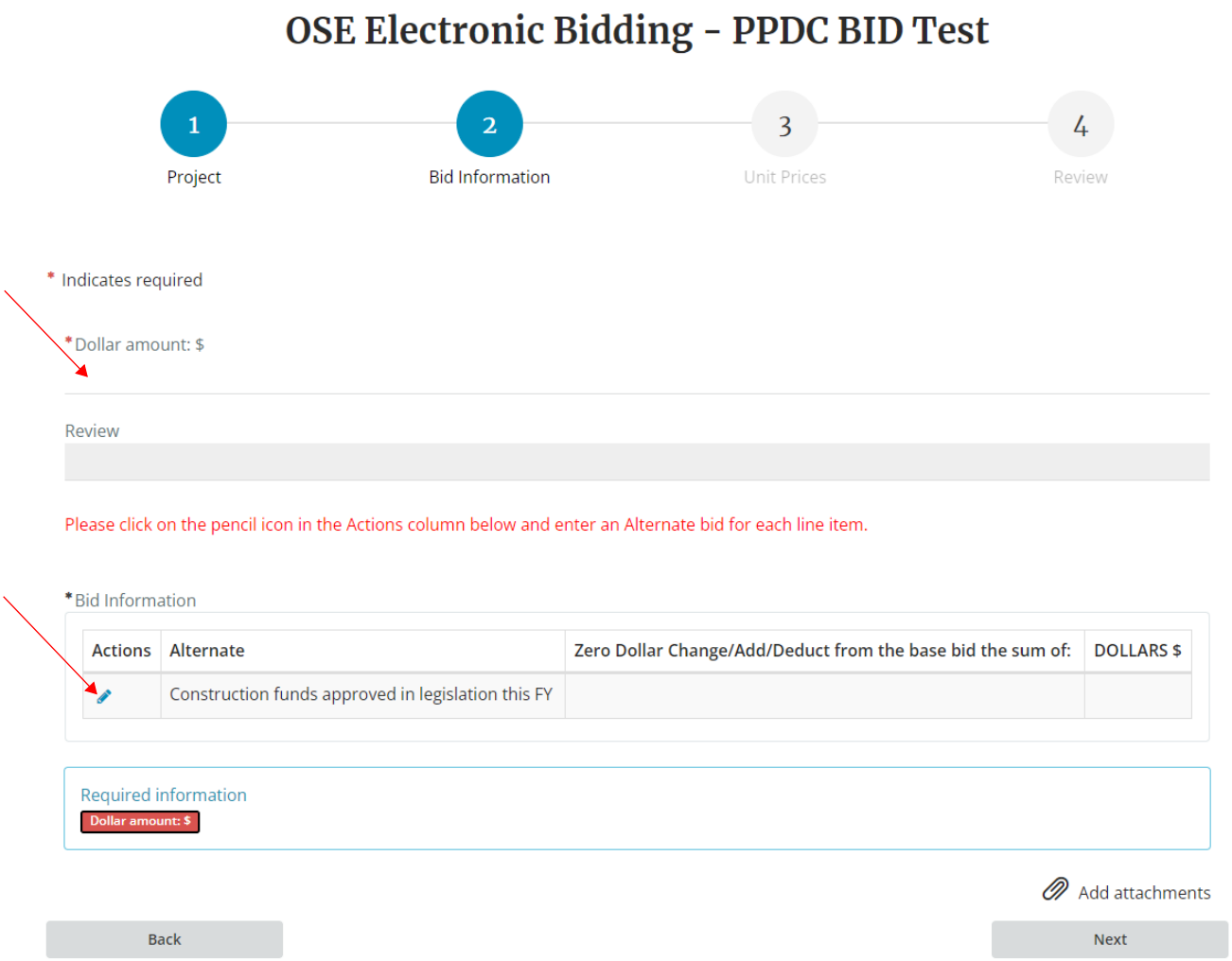
Each project will have its own unique web address for bidding. This can be found in the advertisement on our website for that specific project, the builders exchanges advertisements, as well as the newspapers. If you ever cannot find the link, please reach out to OSE at the contact information above and we can assist you.

When you click the link, it will ask you to log on. Once you have logged on, you'll see the project title and a button to click for "Submit Bit."



Once you click “Submit Bid” you will see the project information populate and the path on top. The Contractor will be prompted to enter their company information.





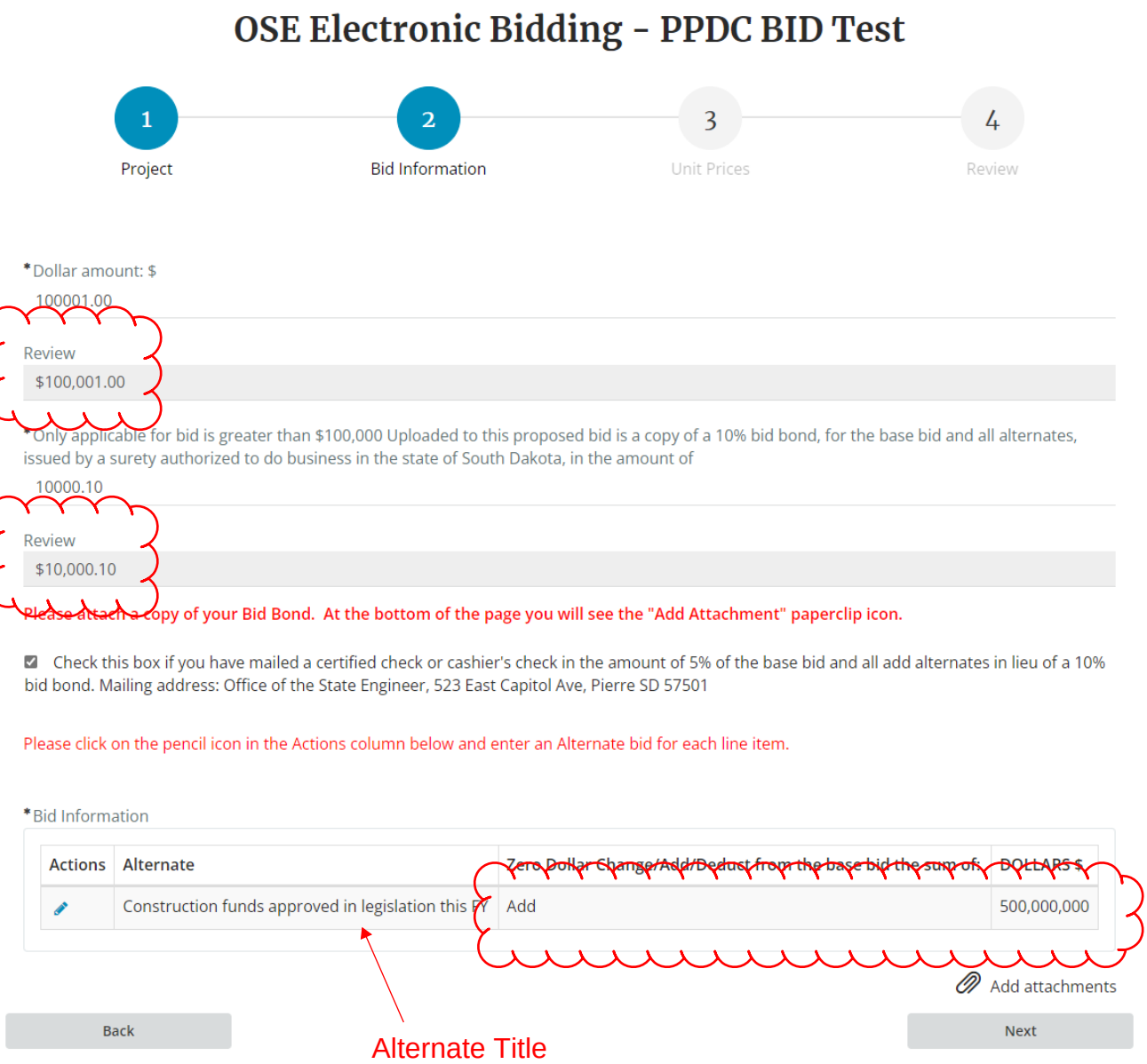
Once you click next, it will bring you to the bid form for the project. This will have base bid plus any alternates. The base bid must be filled in with numbers only (no symbols). Once you fill base bid in and click outside of that field, the review tab will auto populate with symbols for you to review.

If your bid is over $100,000 an additional line will appear asking for a copy of a bid bond. This will only show up, if your bid exceeds that threshold. Please attach a copy (jpg, pdf, or similar) to your bid. If you prefer to mail a certified check, there is also a button you can select that says, "I have mailed a check to OSE, in lieu of a bid bond."

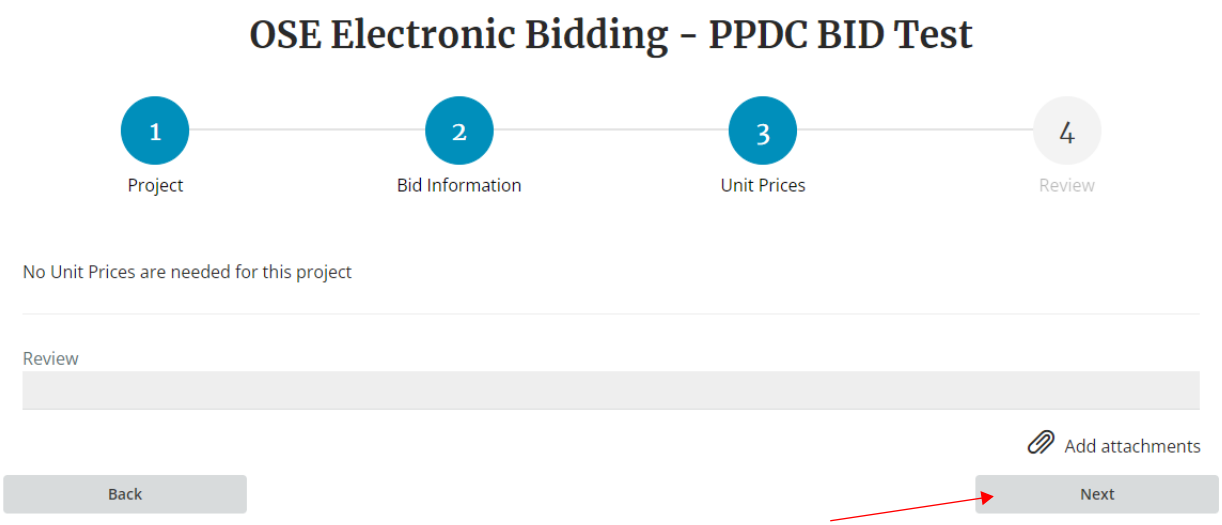
This project has one alternate listed. Click on the pencil to edit the value for the alternate.



Once you click the pencil, it will ask from a drop down menu if you want to add, deduct, or zero dollar change for the alternate. The alternate title will be listed for reference. Once you make your selection, enter your dollar value and click save.



This will then bring you to your bid form filled out for your review.
Then click "Next."



If your project has unit prices, they will populate next for you to fill out. You would enter those in the same fashion that you entered your alternate. Click "Next" to proceed.

OSE Electronic Bidding - PPDC BID Test

1 Project — 2 Bid Information — 3 Unit Prices — 4 Review

This then brings you to your final review page

* Indicates required

OSE #:
ASW22--FUN/PPDC

Project Name:
PPDC BID Test

Project Location:
Drifters Bar and Grille

Project Campus:
Capital Complex

Bid Opening Date
06/03/2022 10:30:00

The undersigned, being familiar with the local conditions affecting the work, and with the Contract Documents, including the Invitation to Bid, Instructions to Bidders, Bid Form, Explanation of Alternates, Modification to Bid Form, Bid Bond Form, Performance and Payment Bond, Acknowledgment of Surety, Sample Certification of Surety, Non-Resident Bidder Affidavit, Form of Agreement for Construction, General Conditions, Special Conditions, Technical Specifications, Plans and Addenda which govern the purchase of material and labor and the awarding of contracts hereby proposes to do all the work and provide all the material and equipment which pertains to this project.

*Bidder:
South African Construction

*Name Of Firm's Representative:
Stacy Watters

*Title Of Firm's Representative:
Grunt

*Phone
(605) 484-6754

*Email
Wattersstacy@gmail.com

*Firm's Business Address:
523 East Capital Ave. Pierre SD 57501

*State of Incorporation:
SD

Review all information!

*Dollar amount: $

100001.00

Review

$100,001.00

*Only applicable for bid is greater than $100,000 Uploaded to this proposed bid is a copy of a 10% bid bond, for the base bid and all alternates, issued by a surety authorized to do business in the state of South Dakota, in the amount of

10000.10

Review

$10,000.10

Please attach a copy of your Bid Bond. At the bottom of the page you will see the "Add Attachment" paperclip icon.

☑ Check this box if you have mailed a certified check or cashier's check in the amount of 5% of the base bid and all add alternates in lieu of a 10% bid bond. Mailing address: Office of the State Engineer, 523 East Capitol Ave, Pierre SD 57501

Please click on the pencil icon in the Actions column below and enter an Alternate bid for each line item.

*Bid Information

Actions	Alternate	Zero Dollar Change/Add/Deduct from the base bid the sum of:	DOLLARS $
✎	Construction funds approved in legislation this FY	Add	500,000,000

No Unit Prices are needed for this project

Review

The above bid includes all applicable State and Municipal Sales and Use Taxes on materials, and State and Municipal Excise Taxes and all other State and Federal Taxes that would affect the amount of the bid. (See Instructions to Bidders-SD Sales and Use Tax Information for Public Contracts.)

In addition, any material furnished by the State for use in this project is subject to Use Tax and Excise Tax. The total taxable value of materials furnished by the State for this project is:

0

A Performance and Payment Bond as required by General Conditions will not be required on contracts which do not exceed One Hundred Thousand Dollars ($100,000). (See SDCL 5-21-1.1 as amended). If discrepancies remain at the time of substantial completion, a value will be assigned to each of the discrepancies and two (2) times their estimated value will be retained from payment to the Contractor until completed and accepted. (See SDCL 5-18-13 as amended).

Within ten (10) days after Contractor's receipt of the Agreement for Construction, the Contractor shall submit to the Office of the State Engineer, the executed Agreement for Construction, Performance and Payment Bond, Certificates of Insurance and Affirmative Action Plan (if applicable).

Work shall be commenced within ten (10) consecutive calendar days after written Notice to Proceed by the State Engineer and shall be substantially completed by:

12/31/2022

The undersigned acknowledges that they have read and understand the Asbestos-Containing Materials Statement contained in the project manual.

Review all information!

In submitting this bid, it is understood that the right is reserved by the Owner to reject any and all bids and to waive any irregularities. It is further understood by the Bidder that he may not withdraw their Bid within 30 days after the actual opening thereof.

In submitting this bid, bidder asserts they have reviewed all provisions of the General Conditions including the provision for assessment of liquidated damages found in Article 10 of the General Conditions. Bidder agrees that the damages anticipated by the Owner in the event of delay in completion of the project are uncertain in amount and difficult to prove; the amount stipulated in Article III of the Agreement for Construction is a reasonable amount in light of the anticipated loss and injury; and the Owner's actual damages in the event of delay would be impracticable or extremely difficult to fix. Bidder agrees to be bound by the liquidated damages set forth in Article III of the Agreement for Construction. Bidder further agrees that the liquidated amount stipulated in Article III of the Agreement for Construction is not a penalty.

For contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars ($100,000) or more, by submitting a response to this solicitation or agreeing to contract with the State, the bidder or offeror certifies and agrees that the following information is correct:

The bidder or offeror, in preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of the bid or offer, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel or its territories, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response. The successful bidder or offeror further agrees to provide immediate written notice to the contracting executive branch agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

*The signer acknowledges that they have read, understand, and agree to the information stated in the Instructions to Bidders

○ Yes

If you need to withdraw your bid after it's submitted, please click on the "Take Action" tab. You will see a Close Request button there.

Submit

Required information

The signer acknowledges that they have read, understand, and agree to the information stated in the Instructions to Bidders

Add attachments

Back

Home > OSE Electronic Bidding - PPDC BID Test

OSE Electronic Bidding - PPDC BID Test

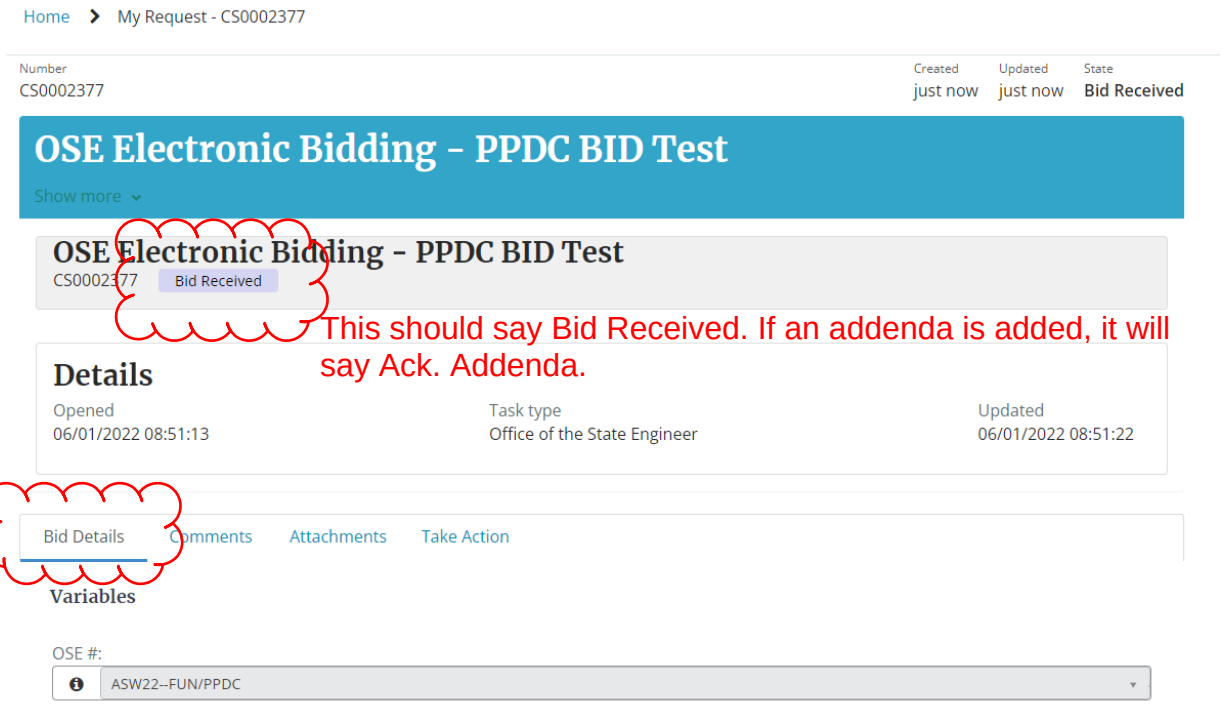
Request Confirmation

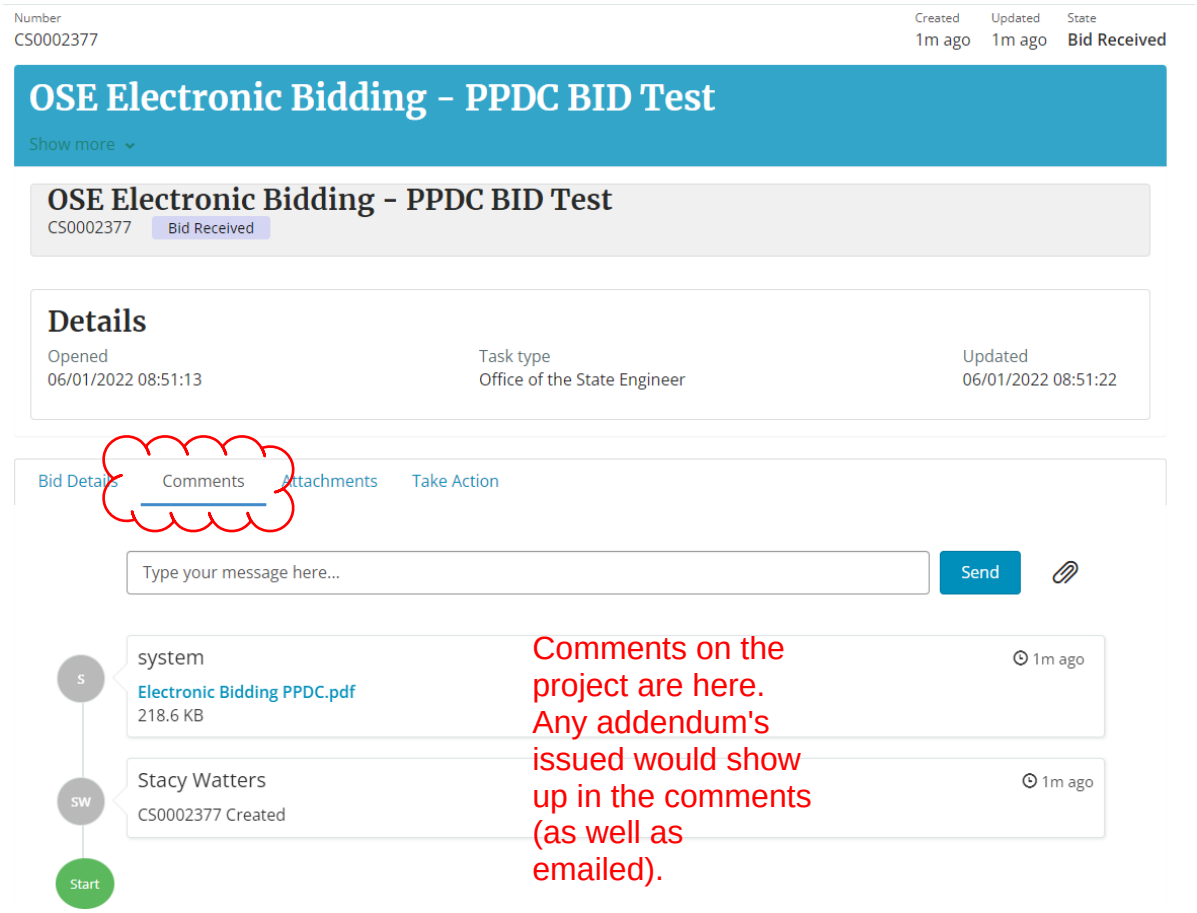
Thank you for submitting request CS0002377

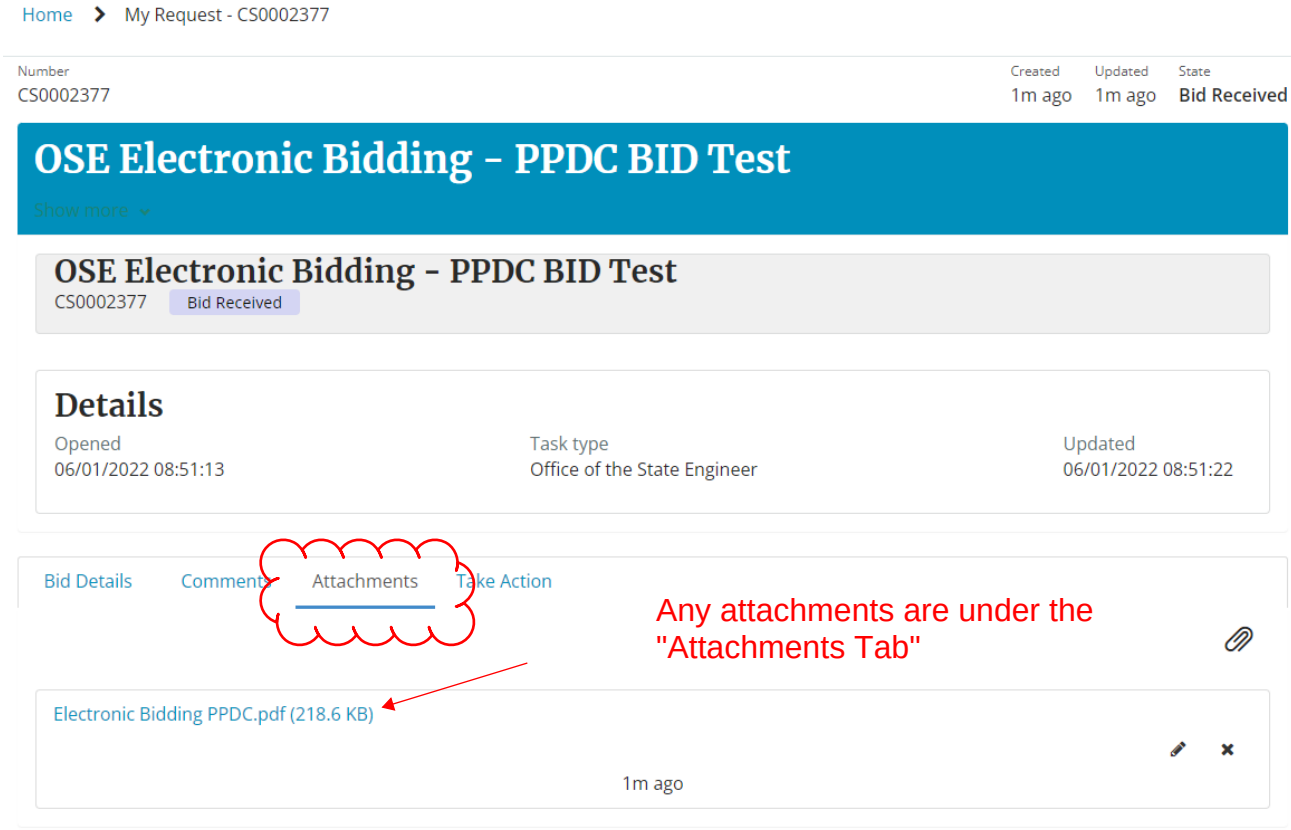
View Request

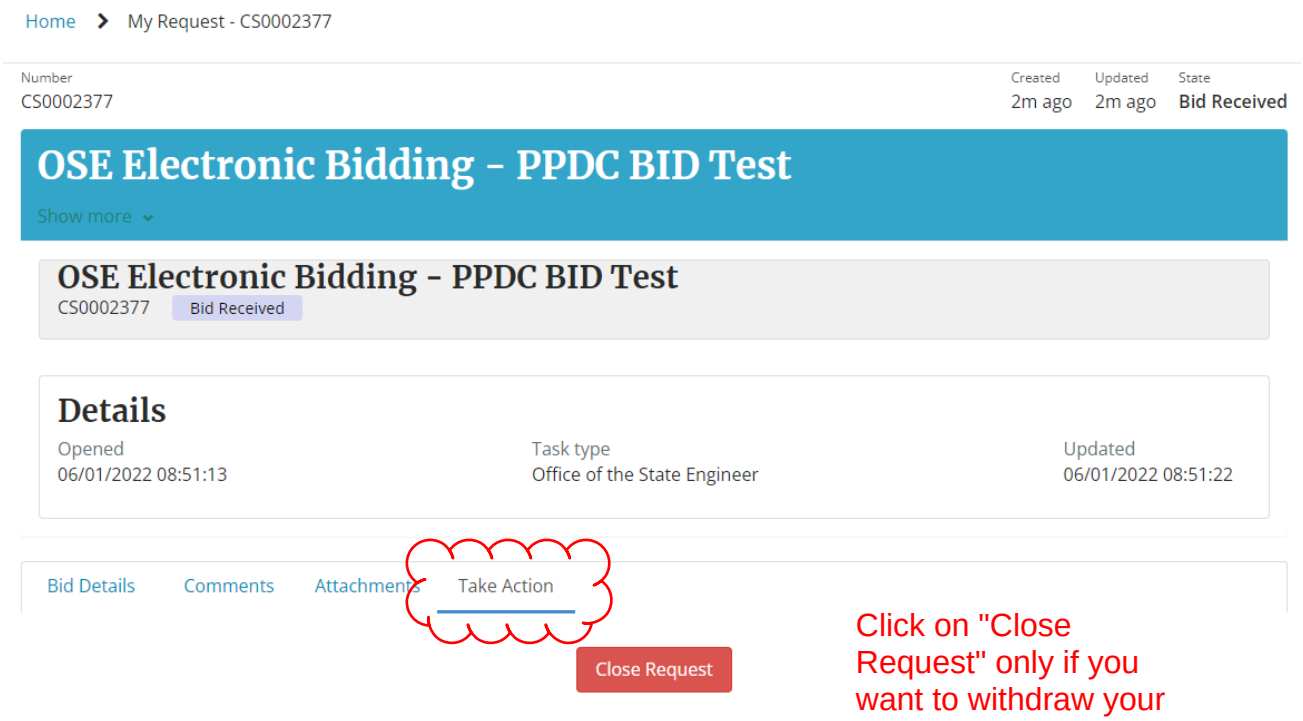
Go Home

Once you click submit, you will see this screen. If you click, view request, you can view and/or edit at any time.

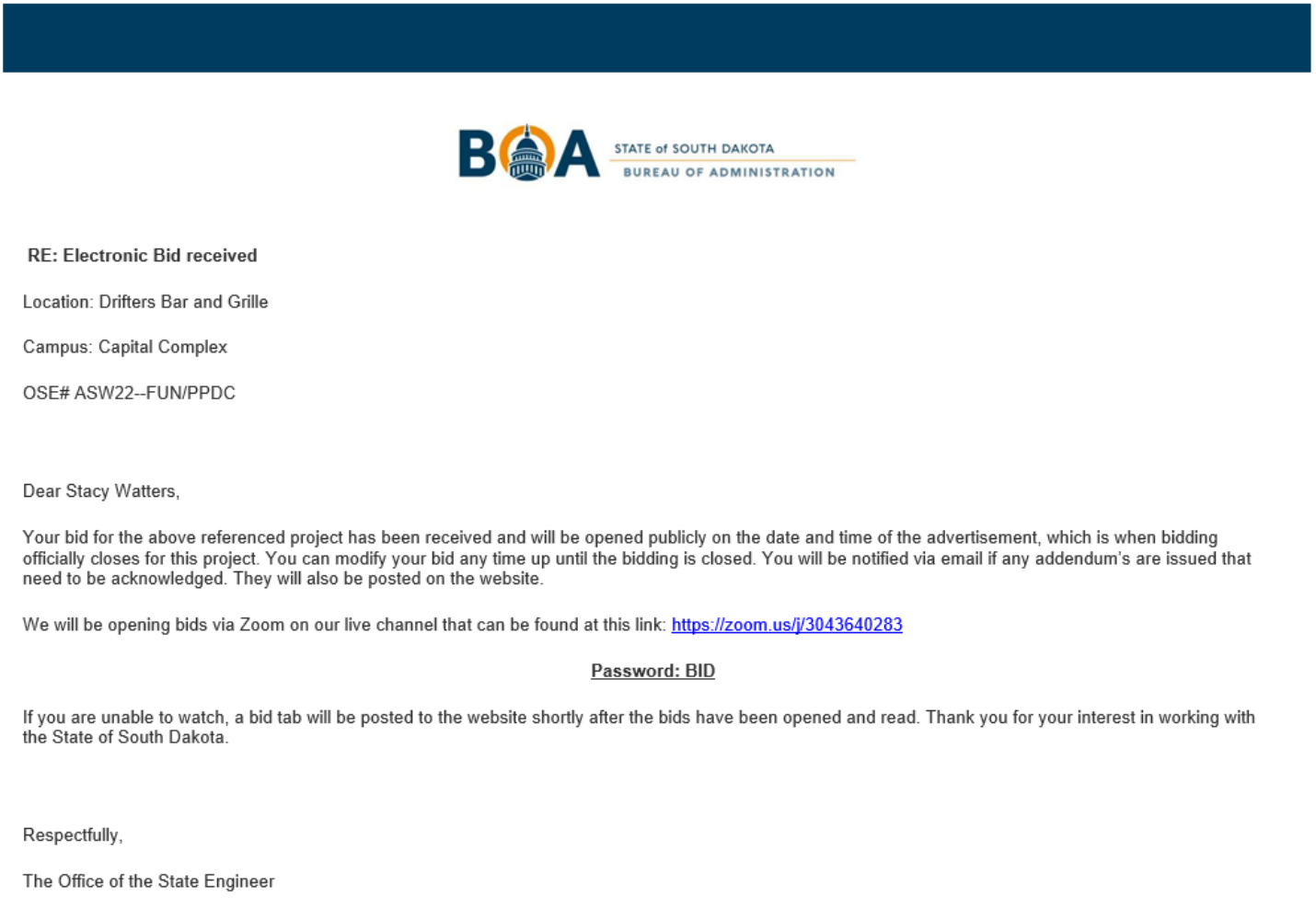

Home > My Request - CS0002377
Number
CS0002377
Created
just now
Updated
just now
State
Bid Received
OSE Electronic Bidding - PPDC BID Test
Show more
OSE Electronic Bidding - PPDC BID Test
CS0002377
Bid Received
This should say Bid Received. If an addenda is added, it will say Ack. Addenda.
Details
Opened
06/01/2022 08:51:13
Task type
Office of the State Engineer
Updated
06/01/2022 08:51:22
Bid Details
Comments
Attachments
Take Action
Variables
OSE #:
ASW22--FUN/PPDC


Number
CS0002377
Created
1m ago
Updated
1m ago
State
Bid Received
OSE Electronic Bidding - PPDC BID Test
Show more
OSE Electronic Bidding - PPDC BID Test
CS0002377
Bid Received
Details
Opened
06/01/2022 08:51:13
Task type
Office of the State Engineer
Updated
06/01/2022 08:51:22
Bid Details
Comments
Attachments
Take Action
Type your message here...
Send
system
Electronic Bidding PPDC.pdf
218.6 KB
1m ago
Stacy Watters
CS0002377 Created
1m ago
Start
Comments on the project are here. Any addendum's issued would show up in the comments (as well as emailed).


Home > My Request - CS0002377
Number
CS0002377
Created
1m ago
Updated
1m ago
State
Bid Received
OSE Electronic Bidding - PPDC BID Test
Show more
OSE Electronic Bidding - PPDC BID Test
CS0002377
Bid Received
Details
Opened
06/01/2022 08:51:13
Task type
Office of the State Engineer
Updated
06/01/2022 08:51:22
Bid Details
Comments
Attachments
Take Action
Any attachments are under the "Attachments Tab"
Electronic Bidding PPDC.pdf (218.6 KB)
1m ago


Home > My Request - CS0002377
Number
CS0002377
Created
2m ago
Updated
2m ago
State
Bid Received
OSE Electronic Bidding - PPDC BID Test
Show more
OSE Electronic Bidding - PPDC BID Test
CS0002377
Bid Received
Details
Opened
06/01/2022 08:51:13
Task type
Office of the State Engineer
Updated
06/01/2022 08:51:22
Bid Details
Comments
Attachments
Take Action
Close Request
Click on "Close Request" only if you want to withdraw your bid entirely.

Once you submit your bid, you will receive an email similar to the snapshot below. You will receive similar emails for any addendum's issued.



STATE of SOUTH DAKOTA
BUREAU OF ADMINISTRATION

RE: Electronic Bid received

Location: Drifters Bar and Grille

Campus: Capital Complex

OSE# ASW22--FUN/PPDC

Dear Stacy Watters,

Your bid for the above referenced project has been received and will be opened publicly on the date and time of the advertisement, which is when bidding officially closes for this project. You can modify your bid any time up until the bidding is closed. You will be notified via email if any addendum's are issued that need to be acknowledged. They will also be posted on the website.

We will be opening bids via Zoom on our live channel that can be found at this link: https://zoom.us/j/3043640283

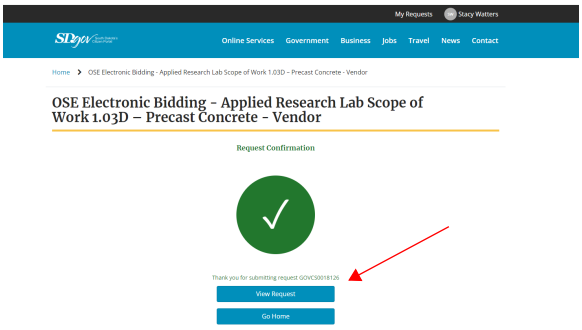
Password: BID

If you are unable to watch, a bid tab will be posted to the website shortly after the bids have been opened and read. Thank you for your interest in working with the State of South Dakota.

Respectfully,

The Office of the State Engineer

- Make sure the email address you use is checked regularly
- When an addendum is issued, you will be notified via email to log back on and acknowledge the addendum(s)
- For projects over $100K, there will be a link to attach a copy of your bid bond or an address to send a cashier's check to (we prefer bid bond over check if possible)
- Any bids submitted will not be visible to those of us at OSE until the day/time of the bid opening
- Once you submit your bid, you will receive an email acknowledging that it was received automatically
- You may withdraw your bid electronically at any time before the bid closes
- Bid Tabulations can be found here, after the bid closes
    - OSE Pr https://www.sd.gov/cs/?id=ose_projectsojects - Citizen Services (sd.gov)





OSE Electronic Bidding - Applied Research Lab Scope of Work 1.03D – Precast Concrete - Vendor

GOVCS0018126 Bid Received

Details

Opened	Task type	Updated
03/14/2024 16:04:49	Office of the State Engineer	03/14/2024 16:04:50

Bid Details | Comments | Attachments | Take Action

Variables

OSE #: R0422–02X

Project Name: Applied Research Lab Scope of Work 1.03D – Precast Concrete - Vendor

Project Location: 800 N. Washington Ave Madison, SD 57042

Project Campus: DAKOTA STATE UNIVERSITY

Bid Opening Date: 03/15/2024 15:30:00

The undersigned, being familiar with the local conditions affecting the work, and with the Contract Documents, including the Invitation to Bid, Instructions to Bidders, Bid Form, Explanation of Alternates, Modification to Bid Form, Bid Bond Form, Performance and Payment Bond, Acknowledgment of Surety, Sample Certification of Surety, Non-Resident Bidder Affidavit, Form of Agreement for Construction, General Conditions, Special Conditions, Technical Specifications, Plans and Addenda which govern the purchase of material and labor and the awarding of contracts hereby proposes to do all the work and provide all the material and equipment which pertains to this project.

*Bidder: South African Construction

*Name Of Firm's Representative: Stacy Watters

*Title Of Firm's Representative: Grunt

*Phone (605) 484-6754

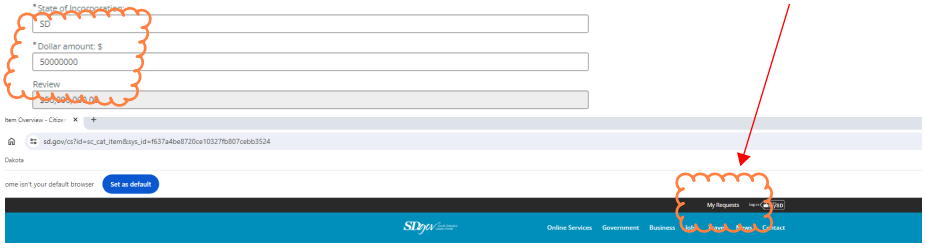
*Email Wattersstacy@gmail.com

*Firm's Business Address: 123 Joe Street

*State of Incorporation: SD

*Dollar amount: $ 50000000

Review



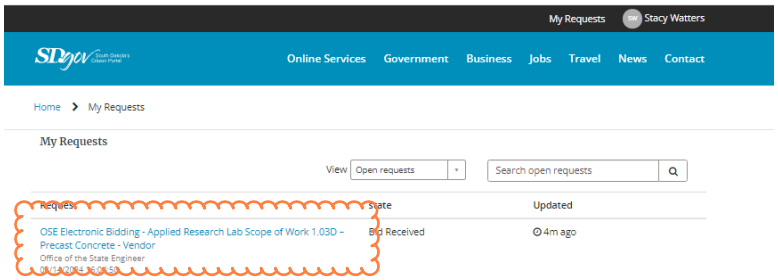


EXHIBIT “C”

BID BOND

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned,_____

_____

as Principal, and _____

as Surety, are hereby held and firmly bound unto _____

as owner for the penal sum of _____ of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed, this _____ day of _____, 20_____.

The condition of the above obligation is such that whereas the Principal has submitted to _____ a certain Bid, attached hereto and hereby made a part hereof to enter into a contract in writing for the _____

_____

_____

_____

_____

NOW, THEREFORE,

(a) If said Bid shall be rejected, or in the alternate

(b) If said Bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract, attached hereto (properly completed in accordance with said bid) and shall furnish a bond for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Bid.

Then this obligation shall be void, otherwise the same shall remain in force and effect: it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extensions of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

_____ (L.S.)
Principal

_____
Surety

SEAL

By:_____

EXHIBIT “D”

PERFORMANCE AND PAYMENT BOND

Performance and Payment Bond form must be from OSE Website or the version sent from OSE with Contract. If example below is used, bond WILL BE REJECTED.

Bond No. _____

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, THAT WE _____

_____

(Contractor – Name and address)

hereinafter called "Principal", and _____

_____

(Surety – Name and address)

a corporation, organized and existing under the laws of the State of _____, and duly authorized to transact business in the State of South Dakota, hereinafter called "Surety", are held and firmly bound unto the State of South Dakota, hereinafter called "Obligee", in the just and full sum of _____Dollars($_____) lawful money of the United States of America to be paid to the State of South Dakota, which payment to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that:

WHEREAS, Principal has been awarded a contract with Obligee for the construction of:

PROJECT NAME: **MJF, Replace Flooring**

PROJECT LOCATION: **State Veteran's Home, Hot Springs, SD**

PROJECT NUMBER: **N1826--02X/SWMR**

which Contract is herein referred to and made a part hereof as fully and to the same extent as if the same were entirely written herein; and

WHEREAS, it was one of the conditions of the award by Obligee of the Contract that these presents should be executed.

PROVIDED, FURTHER, that the Surety, for consideration received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, to work to be performed thereunder or to the specifications accompanying the Contract shall in any manner affect its obligation on this Bond. The Surety hereby does waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, to the work or to the specifications. The Surety further stipulates and agrees that this Bond shall be valid and enforceable regardless of the time period between the date of execution of the Bond by the Surety and the date of execution of the Bond by the Principal.

PROVIDED, FURTHER, that no final settlement between the Obligee and the Principal shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.

SAMPLE

NOW, THEREFORE, if the Principal in all respects complies with the terms and conditions of the Contract and his (their or its) obligations thereunder, including specifications therein referred to and made a part thereof and any alteration made in such specifications as herein or therein provided, then this obligation is void, but otherwise remains in full force and effect.

A further condition of this bond is that in the event the Principal fails to pay all just claims and demands on the part of any employee, person, firm or corporation for labor and materials furnished for or used in connection with the prosecution of the work under the Contract, or fails to pay any tax which may accrue to the State of South Dakota under the provisions of the "Use Tax Act of 1939 and The Excise Tax on Realty Improvements under SDCL 10-46A," and Sections 5-21-3 and 5-21-4 of the South Dakota Codified Laws, this bond and the sureties thereon shall be responsible to such person, firm or corporation and to the State of South Dakota for the full payment of the value of such labor and materials so furnished, including payment of South Dakota use taxes and excise taxes on realty improvements.

SIGNED AND SEALED THIS_____ DAY OF_____, 20___.

INDIVIDUAL PRINCIPAL

By_____Typed Name _____
(Affix Seal if available)

PARTNERSHIP, CORPORATE, OR LLC PRINCIPAL

By_____Typed Name_____

Title_____Business Name_____
(Affix Corporate Seal if available)

Address_____

SAMPLE

INDIVIDUAL, PARTNERSHIP OR CORPORATE SURETY

By_____ Typed Name_____

Title_____ Business Name_____
(Affix Corporate Seal if available)

Address_____

Surety's South Dakota License Number: _____

Insurance Producer's Name: _____

Insurance Producer's South Dakota License Number: _____

ACKNOWLEDGMENT OF PRINCIPAL
(Individual)

State of_____)
) ss
County of_____)

On this _____day of _____, 20 _____, before me personally appeared _____, known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he/she executed the same.

_____
Notary Public

My commission expires the _____day of_____, 20____.

SAMPLE

ACKNOWLEDGMENT OF PRINCIPAL
(Partnership)

State of_____)
) ss
County of_____)

On this _____ day of _____, 20____, before me personally appeared _____, who acknowledged himself/herself to be one of the partners of _____, a partnership, and that he/she, as such partner, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the partnership by himself/herself as a partner.

_____
Notary Public

My commission expires the _____day of_____, 20____.

ACKNOWLEDGMENT OF PRINCIPAL
(Corporation)

State of_____)
) ss
County of_____)

On this _____day of _____ , 20 _____ before me personally appeared _____ , who acknowledged himself/herself to be the _____ of _____, a corporation, and that he/she, as such _____ being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as _____.

_____
Notary Public

My commission expires the _____day of_____, 20____.

SAMPLE

ACKNOWLEDGMENT OF PRINCIPAL
(LLC)

State of_____)
) ss
County of_____)

On this _____day of_____, 20 _____ before me personally appeared _____, who acknowledged himself/herself to be the _____ of_____, a limited liability company, and that he/she in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself/herself as _____.

_____
Notary Public

My commission expires the _____day of_____, 20____.

ACKNOWLEDGMENT OF SURETY
(Corporate Officer)

State of) _____
)ss
County of _____)

On this _ day of _____, 20____, before me, a Notary Public in and for said County, personally appeared _____ personally known to me, who being by me duly sworn, did say that he/she aforesaid officer of the _____of _____, a corporation duly organized and existing under the laws of the State of _____, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that the said instrument was signed, sealed and executed in behalf of said corporation by authority of its Board of Directors, and further acknowledges that the said instrument and the execution thereof to be the voluntary act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed by official seal at _____, the day and year last above written.

_____
Notary Public

My commission expires the _____ day of_____, 20_____.

SAMPLE

ACKNOWLEDGMENT OF SURETY
(Attorney-In-Fact)

State of _____)
)ss
County of _____)

On this _____day of _____, 20____, before me personally appeared _____ known to me or satisfactorily proven to the person whose name is subscribed as attorney in fact for _____and acknowledged that he/she executed the same as the act of his/her principal for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto subscribed my name and affixed my official seal at _____, the day and year last above written.

_____
Notary Public

My commission expires the_____day of_____,20_____.

APPROVAL AS TO FORM

Approved as to form this _____day of_____, 20 ____.

_____
Assistant Attorney General

SAMPLE

EXHIBIT “E”

NON-RESIDENT BIDDER AFFIDAVIT

NON-RESIDENT BIDDER AFFIDAVIT

Country of _____)

)ss

State or Province of _____)

Business Name: _____

Business Address: _____

_____

Affiant's Name and Title: _____

Project Name and Location: **MJF, Replace Flooring, State Veteran's Home, Hot Springs, SD**

OSE Project Number: **N1826--02X/SWMR**

AFFIDAVIT WHEN NO PREFERENCE IS GIVEN

I do hereby affirm that _____ resides in the country of _____

_____ in the state or province of_____

and that said country and/or state or province does not grant a preference to resident bidders for work on behalf of said country, state or province.

Dated: _____ Signed_____

AFFIDAVIT WHEN PREFERENCE IS GIVEN

I do hereby affirm that _____ resides in the country of _____

_____ in the state or province of_____

and that said country and/or state or province does grant a preference to resident bidders for work on behalf of said country, state, or province, the nature and extent of such preference being _____

_____.

Dated: _____ Signed_____

ACKNOWLEDGEMENT OF AFFIANT

Country of _____)

)ss

State or Province of _____)

On this _____ day of _____, 20, before me personally appeared

_____, known to me to be the affiant who, being duly sworn, declares all statements made in this affidavit to be true and correct to the best of his or her knowledge.

_____

Notary Public

My commission expires the _____ day of _____, 20_____.

EXHIBIT “F”

CONTRACTOR’S STATEMENT OF SKILLS AND CAPABILITIES

STATE OF SOUTH DAKOTA
OFFICE OF THE STATE ENGINEER

Contractor's Statement of Skills and Capabilities

Send Completed Form to: Office of the State Engineer
523 East Capitol
Pierre, South Dakota 57501-3182
Phone: 605.773.3466

OSE Project:

Project Name: **MJF, Replace Flooring**
Location: **State Veteran's Home**, **Hot Springs, SD**
OSE# **N1826--02X/SWMR**

CONTRACTOR INFORMATION

A. Business Structure

Submitted By:

1. Current Business Name and Address.

   Business Name:

   Address:

   Phone:

   E-mail:

2. How many years has your company been in business under the name listed above?

3. Has your company been in business under any other business name(s)?
   If so, list previous business name(s) and the years your company operated under each name:

4. If a corporation, provide the:

   Date and State of incorporation:

   Type of corporation:

Names of Officers

President:

Vice-president(s):

Secretary:

Treasurer:

5. If a partnership, provide the:

State of Organization:

Partnership type:

Date of organization:

Names of partners:

6. If individual, provide:

Date of organization:

Name of owner:

7. Use this space to describe your company's business structure if it differs from those listed above:

8. List the states and trades in which you may legally do business where applicable. Provide registration or license number(s).

9. If your company is organized under the laws of another state, has it registered with the Secretary of State for the State of South Dakota and/or the Department of Revenue?

B. Background and History

1. What types of Work does your company perform with its own forces?

2. Has your company ever failed to complete Work it had contracted to perform? Provide details if the answer is “yes.”

3. Within the last five years, has any officer or principal of your company been an officer or principal of another company that failed to complete Work that the latter company contracted to perform? Provide details if “yes.”

4. List any and all judgments, claims, suits at law, or arbitration proceedings pending or outstanding against your company or its officers regarding any construction contracts:

5. Within the last five years, has your company filed law suits or requested arbitration regarding any construction contracts?

6. On separate paper, provide a list of major construction projects your company is currently working on. For purposes of this document “major construction projects” shall be considered anything of average size or greater for your company. Provide name of owner, location, architect, contract amount, and scheduled completion.

7. On separate paper, list the major construction projects your company has completed in the last five years. For purposes of this document “major construction projects” shall be considered anything of average size or greater for your company. Provide name of owner, project, location, architect, contract amount, and scheduled completion.

8. On separate paper, list the construction background/experience of the key personnel in your company.

9. What is the average annual value of all construction work your company performed within the last five years?

C. References

1. List your company's Business/Industry References:

2. List your company's Financial References:

3. Provide the name and address of your company's Surety, as well as the name and address of the Agent:

SIGNATURE AND NOTARIZATION

Date _____ Typed Name: _____

Title: _____

_____ Business Name: _____

Signature

Address: _____

(Affix Seal) _____

On this _____ day of _____, 20, before me personally appeared

_____, known to me to be the affiant who, being duly sworn, declares all statements made in this affidavit to be true and correct to the best of his or her knowledge.

_____

Notary Public

My commission expires the _____ day of ___, 20_____

EXHIBIT “G”

RESIDENT AND NON-RESIDENT SUBCONTRACTOR BREAKOUT

Resident and Non-resident Subcontractor Breakout

Company: _____ Contract Amount: _____

Date: _____

Re: **MJF, Replace Flooring**
State Veteran's Home
Hot Springs, SD
OSE# N1826--02X/SWMR

Resident Contractors

Company	Location	Labor Cost	% Value of Contract
	Total:		

Non- Resident Contractors

Company	Location	Labor Cost	% Value of Contract
	Total:		

As defined in 5-18A:

(26) “Resident,” any person, partnership, association, limited liability company, foreign limited liability company, corporation, or foreign corporation licensed to do business within this state that has maintained a substantial and bona fide place of business and has conducted business from within this state for at least one year prior to the date on which a contract was awarded. The members of the partnership or association shall have been bona fide residents of the state for one year or more immediately prior to bidding upon the contract. A foreign corporation licensed pursuant to §§ 47-1A-1501 to 47-1A-1532, inclusive, is not a resident as defined by this section if the state or country in which it is organized enforces or has a preference for resident bidders;

If more than 20% of the labor cost included in the contract is being provided by nonresident subcontractors, please explain: _____

_____

_____

_____

_____

_____

AGREEMENT FOR CONSTRUCTION

PLANS AND SPECIFICATIONS PREPARED BY
???

PROJECT: **???**
???
???
OSE# ???

AGREEMENT FOR CONSTRUCTION
PRIME CONTRACT

THIS Agreement is made the **??? day of ???, ???** by and between **???, ???, ???** (the "Contractor") and the State of South Dakota, acting through **???** (the "Owner")and its representative the Office of the State Engineer.

WITNESSETH, that the Contractor and the Owner for the consideration stated herein agree as follows:

ARTICLE I, CONTRACT DOCUMENTS:

The following documents and any other documents incorporated in them by reference constitute the contract documents:

1. This Agreement
2. The Project Manual dated **???**
3. The Project Drawings dated **???**
4. Addenda issued prior to execution of this Agreement
5. Contractor's Performance and Labor and Material Payment Bond
6. Value Engineering Letter dated **N/A** (if there is a VE letter, list date here and delete "N/A")

These documents constitute the entire and integrated agreement between the parties hereto and supersede prior negotiations, representations, or agreements, either written or oral. The Index for items 2 and 3 is attached hereto as Exhibit "A."

ARTICLE II, STATEMENT OF WORK:

To the extent not otherwise provided in the contract documents, Contractor shall furnish and pay for all labor, tools, equipment, supplies, materials, appurtenances, utilities, charges, fees, permits, and all other construction accessories and services required to complete the work specified in the contract documents in strict compliance with the contract documents.

ARTICLE III, DATE OF COMMENCEMENT AND COMPLETION:

The work shall be commenced within ten (10) consecutive calendar days after the date of issuance of the Notice to Proceed by the Owner and shall be substantially completed not later than **???**, and completed and ready for final inspection/acceptance no later than **???**, subject to adjustments of the contract time as provided in the contract documents. Should the Contractor fail to substantially complete the work within the time set forth herein, or within such extra time as may have been allowed by increases in the contract, or by formally approved extensions granted by the Owner, the Contractor and the Contractor's surety shall be liable for and shall pay the Owner **$???** per calendar day as liquidated damages for each calendar day of delay until the work is substantially complete. After Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work as outlined in the approved punch list, subject to adjustments of the contract time as provided in the contract documents, the Contractor shall be liable for and shall pay the Owner **$???** as liquidated damages for each calendar day of delay until the Work is completed and ready for final inspection/acceptance.

If split completion date, use the following language: "…by the Owner, **Phase 1 shall be substantially completed not later than ???, and Phase 2 shall be substantially completed not later than ???**, subject to…

SAMPLE

Or

If split completion date, use the following language: "…by the Owner, **Phase 1 shall be substantially completed not later than ???, and Phase 2 shall be substantially completed not later than ???, and completed and ready for final inspection/acceptance no later than ???,** subject to…

Or

If including a day count, use the following language: "… subject to adjustments of the contract time as provided in the contract documents. **Once any portion of the work begins, the Contractor will have ??? consecutive calendar days to complete the work.** …"

ARTICLE IV, CONTRACT SUM:

A. For the performance of the work specified in the Contract Documents, Owner will pay Contractor and Contractor will accept as full compensation the sum of **??? ($???)**, subject to additions or deductions as provided in the contract documents;

B. Contract sum includes the following alternates, if any, which are described in the Contract Documents and are hereby, accepted by the Owner: **N/A** (if there are alternates, list below AND remove "N/A")

Alternate	Short Description	Price
1		**$**
2		**$**

C. Unit Prices, if any, are as follows: **N/A** (if there are unit prices, list below AND remove "N/A")

Unit Price	Short Description	As-bid Price
1		**$ per Unit**
2		**$ per Unit**

Where the quantities originally contemplated are so changed that application of the agreed unit price to the quantity of work performed is shown to create a hardship to the Owner or the Contractor, there shall be an equitable adjustment of the contract to prevent such hardship.

D. Contract sum includes the following value engineering items, if any, which are described in the Contract Documents and are hereby, accepted by the Owner: **N/A** (if there are VE items, list below AND remove "N/A")

VE Item	Short Description	Modified Price
1		**($)**
2		**($)**

E. Contract sum includes all applicable contractor owed taxes for Owner Furnished Contractor Installed material provided at the Owner's cost of **N/A** (if there are OFCI items, list the value from the bid form **$#,###.##** AND remove "N/A")

ARTICLE V, PROGRESS PAYMENTS:

The Owner shall make progress payments on a monthly basis for work accomplished in accordance with General Conditions, Article 11.

ARTICLE VI, ACCEPTANCE AND FINAL PAYMENT:

Final payment less amounts withheld to cover the cost of nonconforming work, shall be made by the Owner in accordance with General Conditions Sub-Article 11.8.

Prior to issuing final payment, the Contractor shall provide Operation and Maintenance Manuals for all material and equipment that requires operation and maintenance work. Operation and Maintenance Manuals shall be as follows:

A. Hard Copies: **???** 3-ring bound copy

SAMPLE

B. Electronic Copies: 1 single PDF file

ARTICLE VII, NOTICE:

All notices, demands and other communications required by the Contract Documents shall be in writing and shall be deemed to have been duly given if personally delivered, mailed first class (postage prepaid), or e-mailed:

If to Contractor:

???
Attn: ???
???
???
Phone: ???
Email: ???

If to Architect/Engineer:

???
Attn: ???
???
???
Phone: ???
Email: ???

If to State:

Bureau of Human Resources and Administration,
The Office of the State Engineer
Attn: Stacy Watters, P.E., State Engineer
Joe Foss Building 523 East Capitol Avenue
Pierre SD 57501-3182
Phone: 605.773.3466
Email: Stacy.Watters@state.sd.us

Either party may change the addresses set forth for notice herein upon written notice thereof to the other.

ARTICLE VIII, INDEPENDENT CONTRACTOR

While performing services hereunder, Contractor is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

ARTICLE IX, CERTIFICATIONS

A. Certifications regarding debarment, suspension, and voluntary exclusion

By signing this Agreement, Contractor certifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment or suspension, declared ineligible, or voluntarily excluded from participating in transactions by the federal government or any state or local government department or agency. Contractor further agrees that it will immediately notify State if during the term of this Agreement Contractor or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

B. Compliance with Executive Order 2020-01

Executive Order 2020-01 provides that for contractors, vendors, suppliers or subcontractors with five (5) or more employees who enter into a contract with State that involves the expenditure of one hundred thousand dollars ($100,000) or more, by signing this Agreement Contractor certifies and agrees that it has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of State of Israel to do business, or doing business in State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for State to terminate this Agreement. Contractor further agrees to provide immediate written notice to State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

SAMPLE

C. Compliance with SDCL ch. 5-18A

Contractor certifies and agrees that the following information is correct:

Contractor is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the purchasing agency to reject the bid or response submitted by, or on behalf of, Contractor on this project and terminate any contract awarded based on the bid or response, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

Contractor further agrees to provide immediate written notice to the purchasing agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination and would be cause to suspend and debar a business under SDCL § 5-18D-12.

ARTICLE X, AUTHORITY TO EXECUTE

Contractor represents and warrants that:

A. Contractor is a corporation duly incorporated, a limited liability company duly formed, or a limited liability partnership duly formed; is validly existing and in good standing under the laws of its state of incorporation or formation; and has all requisite corporate or organizational power and authority to execute, deliver, and perform its obligations under this Agreement.

B. The execution, delivery and performance of this Agreement has been duly authorized by Contractor; the individual(s) signing this Agreement on behalf of Contractor are authorized under the terms of its governing documents; and no approval, authorization or consent of any member, private party, governmental or regulatory agency is required in order for Contractor to enter into this Agreement and perform its obligations under this Agreement that has not been obtained.

C. Contractor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Contractor will conduct business in connection with this Agreement.

D. Contractor has obtained all licenses, certifications, permits, and authorizations necessary to perform the services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of Contractor's performance of the services. Contractor will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement at its own expense.

SAMPLE

IN WITNESS WHEREOF, THE parties hereto have caused this instrument to be executed in one original counterpart the day and year above first written:

Contractor:

_____ _____
(DATE)

(Print Name and Title)
???
???
???

Recommended by:

_____ _____
STACY WATTERS, P.E. (DATE)
State Engineer
THE OFFICE OF THE STATE ENGINEER

Owner: [Add/Delete any un-needed signature blocks]
State of South Dakota

_____ _____
??? (DATE)
???
???

_____ _____
NAME (DATE)
Title
AGENCY/CAMPUS

_____ _____
NAME (DATE)
Title
AGENCY/CAMPUS

_____ _____
NAME (DATE)
Title
AGENCY/CAMPUS

Reviewed by: [Add/Delete any un-needed review blocks] [Initials] [DATE]

???, OSE:_____
Required Documents Received

Name, Org: _____

Name, Org: _____

Name, Org: _____

Name, Org: _____

Name, Org: _____

[If ANY language is changed BHRA legal needs to review/approve OSE PM to coordinate.]

SAMPLE

Exhibit "A"
AGREEMENT FOR CONSTRUCTION
Enumeration of Contract Documents

1. This agreement
2. The General and Special Conditions contained in the Project Manual dated **???**.
3. The Invitation for Bids and Instruction to Bidders contained in the Project Manual dated **???**.
4. The Specifications are those contained in the Project Manual dated **???** and are as follows:

Section	Title	Pages
	See Attached Index	**???**

5. The drawings are as follows:

Sheet	Title	Date
	See Attached Sheet Index	**???**

6. The addenda, if any, are as follows:

Number	Date	Pages
####	DATE	# OF PAGES
####	DATE	# OF PAGES
####	DATE	# OF PAGES

7. Value Engineering Letter dated **N/A** [if there are VE items, enter letter date AND remove "N/A]
8. The Performance and Labor and Material Payment Bond dated _____,

   Issued by _____,
   (name)
   _____,
   (address)
   Bond # _____,

   Authorized Name/Title:_____.
9. Other documents forming a part of the Contract Documents are:

   List any other documents, including title and date

SAMPLE

GENERAL CONDITIONS

TO

AGREEMENT FOR CONSTRUCTION

FOR

MJF, REPLACE FLOORING
STATE VETERAN'S HOME
HOT SPRINGS, SD
OSE# N1826--02X/SWMR

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Article 1
Definitions

1.0 Unified Applicability: These General Conditions apply to both Design-Bid-Build and Design-Build delivery.

1.0.1 For Design-Bid-Build projects, the term 'Contractor' means the entity performing construction only. All Design-Build-specific provisions in these General Conditions are inapplicable and of no force or effect.

1.0.2 For Design-Build projects, the term 'Contractor' means 'Design-Builder' and includes all licensed design professionals retained by the Design-Builder. All provisions of these General Conditions apply except where expressly superseded by Design-Build Special Conditions or Owner's Performance Criteria.

1.1 Owner: The Owner is the State of South Dakota, acting through the State department, board, commission, or agency identified in the Agreement for Construction (as applicable), and its representative, the Office of the State Engineer, acting on behalf of the commissioner of the Bureau of Human Resources and Administration.

1.2 Architect/Engineer: The term "architect/engineer" (hereinafter A/E) means the person or entity identified as such on the cover sheet to the drawings or plans and includes its authorized representatives, consultants, subconsultants, and any successor A/E formally designated by the Owner. References to the A/E include all design consultants engaged under the A/E's contract with the Owner.

1.3 Contractor: The term "contractor" means the person or entity identified as such in the Agreement for Construction and includes its officers, employees, agents, and all persons or entities performing Work under its responsibility, unless the Contract Documents expressly state otherwise. **For Design-Build projects**, references to the 'Contractor' include the Design-Builder and all design professionals engaged under the Design-Builder's responsibility.

1.4 Subcontractor: Any individual, firm or corporation to whom the Contractor sublets any part of the contract for supplying materials and labor, or only labor, at the site of the Project. A subcontractor includes all lower-tier subcontractors unless expressly excluded by the Contract Documents. **For Design-Build projects**, Subcontractors include design consultants, engineers, architects, and specialty designers retained by the Design-Builder for performance of design services.

1.5 The Contract Documents: The documents identified as the Contract Documents in the Agreement for Construction, including all amendments, Change Orders, addenda, clarifications, and written directives issued pursuant to the Contract Documents. Clarifications, RFIs, comments, or notations issued by the Owner or A/E do not modify the Contract Documents or entitle the Contractor to adjustment of Contract Sum or Contract Time unless incorporated into a written Change Order.

1.6 The Contract: The Contract Documents form the contract. The contract may be amended or modified only in writing in the manner set forth in Article 14. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner and any subcontractor, sub-subcontractor or supplier. No oral statement or direction by the Owner or A/E shall modify the Contract unless confirmed in writing by the Owner. Nothing in these General Conditions shall be construed to authorize post-award changes that materially alter the scope, quality, or price basis upon which competitive sealed bids or proposals were evaluated and awarded. Only written modifications executed in accordance with Article 14 shall alter the Contract Documents.

1.7 The Work: The completed construction required by the Contract Documents, and every part thereof, and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated into such construction. The Work also includes all incidental obligations, services, and coordination activities reasonably inferable from the Contract Documents.

1.7.1 **For Design-Build projects only**: 'The Work' includes all design services, preparation of stamped and signed Construction Documents, engineering calculations, specifications, technical submissions, and Record Drawings. The Design-Builder is solely responsible for the accuracy, completeness, coordination, code compliance, and constructability of its design, and no review, comment, or approval by the Owner or A/E transfers any portion of this responsibility.

1.7.2 **For Design-Build projects**, 'The Work' also includes all revisions and updates to design documents required to complete the Project and meet Performance Criteria.

1.8 The Project: The total construction of which the work performed under the Contract Documents may be the whole or a part. The Project includes all related work performed by separate contractors or the Owner when such work affects or interfaces with the Contractor's Work.

1.9 The Drawings or Plans: The graphic and pictorial portions of the Contract Documents showing the design, dimensions and layout of the work including, but not limited to, plan views, elevation views, details, sections, schedules, and diagrams. Drawings include all revisions issued by the A/E and accepted by the Owner in accordance with the Contract. **For Design-Build projects**, Drawings include design documents prepared by the Design-Builder and approved by the Owner or A/E for compliance with Performance Criteria.

1.10 The Specifications: The written requirements in the Contract Documents for materials, equipment, construction systems, standards and workmanship, and all performance requirements, procedural requirements, and administrative provisions applicable to the Work.

1.11 Performance Criteria: **For Design-Build projects only**, 'Performance Criteria' means the design requirements, functional objectives, technical parameters, applicable codes, and project expectations issued by the Owner in the Request for Design-Build Proposals or Project Manual. Performance Criteria govern the Design-Builder's design obligations and must be satisfied in all design submissions and Construction Documents.

1.12 The Project Manual: The Project Manual is the compilation of the documents issued by the Owner that include, without limitation, the Invitation to Bid, Instructions to Bidders, Bid Forms, Bonds, Agreement for Construction, General Conditions, Special Conditions, Technical Specifications, and the Plan Index. The Project Manual forms part of the Contract Documents but does not include documents or pages that are expressly designated as informational-only or non-contractual.

1.13 Owner's Separate Contractors: Owner's Separate Contractors are any contractors, consultants, or vendors retained directly by the Owner under separate agreements for work or services that may interface with or impact the Work.

Article 2
Execution, Correlation and Intent

2.1 By executing the contract, the contractor represents that it has carefully examined the Plans, Specifications, the entire Project site, and the Contract Documents in accordance with the requirements of the Instructions to Bidders, and that it has correlated such information with the requirements of the Work. **For Design-Build projects only**: All references to Drawings, Plans, and Specifications include design documents prepared by the Design-Builder and approved in accordance with the Performance Criteria. The Contractor shall not rely on any verbal clarification. All interpretations affecting cost, time, or scope must be issued in writing by the Owner or A/E.

2.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings. All work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such work is to be done by others. Should the Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quantity of work and/or materials unless otherwise directed by written clarification or change issued by the Owner. Where the Contract Documents appear inconsistent, the Contractor shall request written interpretation before proceeding with the affected Work. In no event shall the Contractor rely upon assumed interpretation or proceed at risk when a reasonable doubt exists.

2.3 If the Contractor discovers any inconsistency, conflict, ambiguity, or omission in the Contract Documents, including but not limited to conflicts between large-scale and small-scale drawings, between drawings and specifications, or between different specification sections, the Contractor shall promptly seek clarification through a Request for Information (RFI). The Contractor shall not rely on any assumed interpretation when a reasonable doubt or conflict exists. Requests for Information shall clearly identify the conflicting, ambiguous, or missing requirement and shall not be used to propose changes or substitutions.

2.3.1 **For Design-Build projects only**: RFIs requesting design interpretation, clarification of Performance Criteria, resolution of design conflicts, or identification of design omissions shall not shift any portion of design responsibility to the Owner or the A/E. The Design-Builder remains solely responsible for the accuracy, completeness, coordination, code compliance, and constructability of its design, and shall resolve all design inconsistencies within its contractual design obligations.

2.3.2 **For Design-Bid-Build projects only**: Nothing in this Article 2.3 limits the Contractor's ability to request interpretation or to seek equitable relief arising from errors or omissions in the A/E's design.

2.4 The organization of the Specifications into Divisions, Sections and Articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade. No such organizational structure shall be construed to reduce or limit the Contractor's responsibility for coordination of the Work. Division or section headings do not allocate responsibility among trades. The Contractor remains fully responsible for coordination of all Work regardless of how the Specifications or Drawings are organized.

2.5 Neither the Owner nor the A/E assumes any liability arising out of jurisdictional issues raised or claims advanced by trade organizations or other interested parties based on the arrangement or manner of subdivision of the content of the Specifications and Drawings. The Contractor shall resolve all jurisdictional disputes without cost or delay to the Owner. The Contractor shall resolve jurisdictional disputes promptly and without impact to cost, schedule, or quality.

2.6 The Contractor and all Subcontractors shall refer to all of the Drawings, including those showing primarily the work of the mechanical, electrical, and other specialized trades, and to all of the Sections of the Specifications, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results. The Contractor shall promptly report any discrepancy or omission which the Contractor observes in the Construction Documents and any need for clarification or interpretation to the Owner and the A/E. The Contractor's failure to do so will cause any additional cost incurred by the Contractor to be its sole responsibility. The Contractor shall number Requests for Information in consecutive order. The Contractor shall maintain a log of each Request for Information indicating the date it was issued, the date or dates of any correspondence and/or discussions on the Request for Information, and the date a final answer is received. The Contractor shall submit RFIs sufficiently in advance of the affected Work to avoid delays; late RFIs shall not justify additional cost or time. Failure to submit timely RFIs or failure to identify conflicts in advance shall constitute Contractor responsibility for any associated delay or cost.

2.7 The General Conditions and the Special Conditions are a part of each Section of the Specifications. The Special Conditions for Mechanical and Electrical Trades, if any, are part of each Section of the Specifications referenced therein, and apply to the work of the trades affected thereby. If a Special Condition conflicts with the General Conditions, the Special Condition shall govern only with respect to the specific technical requirement expressly stated therein.

2.8 A typical or representative detail indicated on the Drawings shall constitute the standard for workmanship and material throughout corresponding parts of the Work. Where necessary, and where reasonably inferable from the Construction Documents, the Contractor shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be subject to prior approval by the A/E. Repetitive features shown in outline on the drawings shall be in exact accordance with corresponding features completely shown. Where multiple details appear inconsistent, the most stringent requirement shall apply unless otherwise clarified by the Owner through a written interpretation or approval.

2.9 The layout of mechanical and electrical systems, equipment, fixtures, piping, ductwork, conduit, specialty items, and accessories indicated on the Drawings is diagrammatic, and all variations in alignment, elevation, and detail required to avoid interferences and satisfy architectural and structural limitations are not necessarily shown. Actual layout of the Work shall be carried out without affecting the architectural, engineering and structural integrity and limitations of the Work and shall be performed in such sequence and manner as to avoid conflicts, provide clear access to all control points, including valves, strainers, control devices, and specialty items of every nature related to such systems and equipment, obtain maximum headroom, and provide adequate clearances as required for operation and maintenance. The Contractor is responsible for verifying all field dimensions and coordinating spatial requirements among all trades to prevent conflicts. **For Design-Build projects only**: Diagrammatic layouts do not shift responsibility for complete design coordination. The Design-Builder shall ensure all systems meet Performance Criteria and are fully coordinated in both design and installation.

2.10 The Drawings shall not be scaled for dimensions. If figured dimensions are not given on the Drawings, the Contractor shall request such dimensions from the A/E giving reasonable advance notice. Inconsistencies between scaled measurements and field conditions shall be resolved through written clarification before proceeding with the affected Work.

2.11 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

2.12 Where codes, standards, requirements and publications or public and private trade associations or other bodies are referred to in the Specifications, references shall be understood to be in the latest revision prior to the date of receiving bids, except where otherwise indicated. If a referenced standard is withdrawn or superseded, the Contractor shall comply with the successor standard unless otherwise directed in writing by the Owner. If a referenced standard is superseded, withdrawn, or substantially revised after bid but before construction, the Contractor shall notify the Owner and A/E in writing and await direction before proceeding with affected Work.

2.13 Where no explicit quality or standards for materials or workmanship are established for work, such work is to be of good quality for the intended use and consistent with the quality of the surrounding work, consistent with the quality reflected elsewhere in the Project, and conforming to industry standards. In Design-Build delivery, the Contractor's design obligations shall include compliance with all performance requirements, functional criteria, and regulatory obligations set forth in the Contract Documents. In no case shall the Contractor or Design-Builder perform Work or develop design solutions that fall below generally accepted industry standards or applicable code requirements.

2.14 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents. A complete copy of the manufacturer's written or printed directions shall be provided to the Owner upon completion of the Project. The Contractor shall ensure that such documentation is indexed, organized, and complete, and that all manufacturer requirements are fully incorporated into the Contractor's installation and start-up procedures.

Article 3
Ownership, Use of Documents, Confidentiality of Documents.

3.1 Ownership of Work Product. Any plans, specifications, engineering calculations, technical data, reports, miscellaneous drawings, and all information contained therein provided by the State, its consultants, employees, contractors and agents to the contractor for the contractor's performance of its obligations under this agreement are the property of the State. They are to be used only with respect to this Project and are not to be used for any other project. The contractor may not disseminate these materials to any person or entity nor may the contractor use these materials for purposes other than work for the state, without the express written approval of the state. All documents, models, and digital files created by the Contractor or Design-Builder in performing the Work, whether design-related or construction-related, shall become the property of the Owner upon creation and shall be used only for purposes of the Project. The state shall not unreasonably withhold such approval for dissemination of these materials as necessary to subcontractors and suppliers.

3.1.1 All ownership rights stated in this Article extend to any electronic versions of the Construction Documents, including CAD files, BIM models, specifications, and digital project records. Use of electronic documents does not grant the Contractor or any Subcontractor license to reuse or modify such documents for any other project or purpose.

3.1.2 Nothing in this Article conveys to the Contractor any copyright, intellectual-property, or derivative-work rights in any State-provided materials, whether digital or physical. Nothing in this provision limits the Contractor's or Design-Builder's right to use its underlying know-how, methodologies, or standard details on other projects, provided that no State-owned documents or data are used or disclosed.

3.1.3 Electronic models, BIM files, CAD files, and digital data are provided solely as supplemental reference information. The Contractor/Design-Builder shall not rely on such models or data for dimensions, quantities, coordination, or design accuracy, and assumes all risk associated with such reliance.

3.2 Confidentiality of Documents. All reports, plans, specifications, engineering calculations, technical data, miscellaneous drawings, and information contained therein provided to or prepared by the contractor, its owners, officers, employees, agents, consultants, suppliers, and subcontractors in connection with the contractor's performance under this Agreement are confidential and the contractor, its owners, officers, employees, agents, consultants, suppliers, and subcontractors shall not disclose this information to any person, individual, or entity without the express written permission of the state. **For Design-Build projects**, all Qualitative Proposals, Management Proposals, draft design submissions, scoring materials, and Performance Criteria are confidential and subject to the same non-dissemination and return/destroy requirements applicable to State-provided documents.

3.2.1 Confidential information includes, without limitation, electronic files, digital project data, markups, comments, RFIs, submittals, and any information related to security-sensitive facilities, infrastructure, or systems.

3.2.2 Disclosure of confidential information to third parties engaged in pricing, fabrication, or performance of the Work shall be limited to the minimum information necessary and shall require written acknowledgment from such third parties of their confidentiality obligations.

3.2.3 The confidentiality obligations in this Article survive completion of the Work and termination of the Contract.

Unauthorized disclosure of confidential documents or electronic data shall constitute a material breach of the Contract.

3.3 Return of Documents. All documents covered by Article 3 shall be delivered to the A/E at the completion of the work. The contractor may not retain any such documents for its own use without the express written permission of the state and any documents that are retained, with or without state permission, shall be subject to all of the requirements of Article 3.

3.3.1 Upon completion, all electronic files, BIM models, CAD files, digital markups, and project records shall be transmitted in formats specified by the Owner. The Contractor shall not retain copies beyond those authorized in writing by the State.

3.3.2 Any retained documents, including electronic versions, shall continue to be governed by all confidentiality and use restrictions in this Article.

3.4 Terms to be Included in Subcontracts. The contractor shall include the requirements of Article 3 in any contract it enters into with any consultants, subcontractors, suppliers, persons, individuals, or entities for the performance of any of the contractor's obligations under this agreement.

3.4.1 Such subcontract agreements shall explicitly require that all State-owned documents, in any format, be used solely for performance of the Work and that all confidentiality obligations apply fully to each lower-tier contractor.

3.4.2 The Contractor shall be responsible for enforcing these confidentiality and document-use restrictions among all lower-tier participants and shall be liable for breaches of such obligations by any party acting under its direction.

Article 4
A/E'S RESPONSIBILITIES

4.1 The A/E, under the direction of the State Engineer, will provide administration of the Contract as hereinafter described. The A/E will represent the Owner during construction. The A/E will advise and consult with the Owner. The Owner's instructions to the Contractor may be forwarded through the A/E. The A/E will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by a written instrument in accordance with Sub-Article 4.15.

4.1.1 **For Design-Build projects only**: The A/E's role during design and construction is limited to reviewing the Design-Builder's design submissions solely for conformity with the Owner's Performance Criteria. The A/E does not direct, control, supervise, or assume responsibility for the Design-Builder's design decisions, engineering judgments, means, methods, sequencing, constructability, or technical sufficiency of the design.

4.1.2 **For Design-Build projects only**: All A/E comments, notations, or approvals regarding any design submission in a Design-Build project are for the limited purpose of confirming general compliance with Performance Criteria and shall not be construed as acceptance of design accuracy, completeness, or suitability, nor as transferring any design responsibility to the Owner or the A/E.

Nothing in this Article shall be construed as expanding the A/E's duties beyond those expressly stated in the Contract Documents.

4.2 The Contractor shall accept instructions only from the A/E or State Engineer, and not the A/E's consulting engineers, except as the A/E and State Engineer shall authorize in writing.

4.3 The A/E will visit the construction site at intervals appropriate to the stage of construction to keep generally familiar with the progress and quality of the work completed and to determine in general if the Project is being constructed in a manner such that when completed it would be in conformance with the plans and specifications and other Contract Documents. The A/E will not, however, be required to make exhaustive or continuous on-site inspections to check the quality or quantity of work. On the basis of such observations or inspections, the A/E shall keep the Owner informed of the progress and quality of the work on the Project and endeavor to guard the Owner against defects and deficiencies in the work of the Contractor. The A/E will maintain written reports of all site visits. A/E site observations are representative and not exhaustive. The Contractor remains fully responsible for continuous monitoring, quality control, and compliance with all Contract requirements.

4.4 The A/E shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project, since these are solely the Contractor's responsibilities under the Agreement for Construction. The A/E shall not be responsible for the Contractor's schedules or failure to carry out the Project in accordance with the Contract Documents. The A/E shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Project, except to the extent that the A/E may formally notify the Contractor of the unacceptability of various portions of the Project or failure to carry out the Work on the Project in accordance with the Contract Documents. A/E review or approval of any portion of the Work shall not relieve the Contractor of its full responsibility for compliance with the Contract Documents. Any A/E comments concerning construction means, methods, sequencing, safety, or work procedures are advisory only and shall not be relied upon by the Contractor/Design-Builder.

4.5 The A/E will inform the Contractor on behalf of and in consultation with the Owner to cease work on the Project or portions thereof affected by those items that are unacceptable and remain uncorrected until such time as corrections are made. All such instructions shall be issued in writing.

4.6 The A/E shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the A/E may perform his functions under the Contract Documents. Access shall include reasonable access to electronic project information, digital models, submittal logs, RFI logs, and other project records maintained electronically.

4.7 Except as may otherwise be provided in the Contract Documents or when direct communications have been approved by the A/E, the Owner and its representatives and the Contractor shall communicate through the A/E. Communications by and with the A/E's consultants shall be through the A/E. The Contractor shall not rely on verbal communications; all direction affecting cost, time, scope, or interpretation shall be confirmed in writing. Verbal statements or informal comments made by the A/E or Owner shall not modify the Contract or authorize changes to cost, time, or scope.

4.8 The A/E will determine the amounts owing to the Contractor based on inspections and observations at the site, and on evaluations of the Contractor's Monthly Applications for Payment, and shall issue Certificates of Payment for amounts due on forms provided by the State Engineer. A Certificate of Payment constitutes a representation by the A/E to the Owner, based upon the inspections and the information provided by the Contractor in the Application, that the Project has progressed to the point indicated; that to the best of the A/E's knowledge, information and belief, the quality of the work on the Project is in accordance with the Contract Documents; and that the Contractor is entitled to payment in the amount certified. A/E review of payment applications does not constitute acceptance of Work or relieve the Contractor of responsibility for defective or non-conforming Work.

4.9 The A/E shall have authority to reject work on the Project which does not conform to the Contract Documents. Whenever the A/E considers it necessary or advisable for implementation of the intent of the Contract Documents, the A/E will have authority to recommend to the Owner additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed or completed. However, neither this authority of the A/E nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the A/E to any Construction Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work on the Project. A/E rejection shall be in writing and shall identify the basis for rejection. A/E decisions regarding rejection of Work do not relieve the Contractor of responsibility for correcting non-conforming or defective Work at its own cost.

4.10 The A/E shall review and approve or take other appropriate action on Shop Drawings, Product Data and Samples submitted by Construction Contractors to determine if they conform with the design concept for the Project and with the information provided in the Contract Documents, and submit these documents or information to the Owner indicating the A/E's approval or comments with reasonable promptness so as to cause no delay to the prosecution of the Project. Approval or acceptance of a specific item shall not necessarily indicate the A/E’s approval of an assembly of which the item is a component. When professional certification of equipment is required by the Contract Documents, the A/E will be entitled to rely upon that certification to determine that the materials, systems, or equipment will meet the performance criteria required in the Contract Documents. A/E review is for design compliance only and does not include verification of dimensions, quantities, field conditions, fabrication methods, or coordination among trades, all of which remain the Contractor’s responsibility. The Contractor remains solely responsible for verifying dimensions, field conditions, and coordination of all systems shown or implied in submittals. **For Design-Build projects only**: A/E review, comments, or approvals of any design submittal are for the limited purpose of confirming general compliance with Performance Criteria and do not constitute acceptance of design accuracy, completeness, or technical sufficiency.

Approval or acceptance of a specific item shall not necessarily indicate the A/E's approval of an assembly of which the item is a component. When professional certification of equipment is required by the Contract Documents, the A/E will be entitled to rely upon that certification to determine that the materials, systems, or equipment will meet the performance criteria required in the Contract Documents.

4.11 The A/E will conduct, at the time and place approved by the Owner, with representatives of the State agencies involved in the Project and the Contractor, inspections to establish dates of Project acceptance and completion. The A/E shall have other A/Es, Structural, Mechanical, or Electrical Engineers, or other consultants in their employ in attendance at this and at various progress inspections as may be necessary to evaluate whether the work completed on the Project is in conformance with the Contract Documents. The A/E will receive and forward to the Owner, with comments on completeness or acceptability, those warranties, operation manuals, and other documents required by the Contract Documents and assembled by the Contractor. A/E participation in inspections does not waive requirements for complete and accurate closeout documentation.

4.12 The A/E will review the final estimate for final payment to the Contractor and provide a Certificate of Final Payment to the Owner. A/E certification shall not relieve the Contractor from continuing obligations under warranties, guarantees, or correction-of-work provisions.

4.13 The A/E will provide to the Owner or the Contractor, upon written request in the form of a Request for Information, interpretations and decisions in writing, or in the form of drawings, on matters concerning performance under the Contract Documents, and execution or performance of the Work on the Project. Response to such requests shall be made with reasonable promptness and within any time limits agreed upon. The final decision on all such questions shall be made by the State Engineer. All interpretations and clarifications that affect price, schedule, or scope shall be issued in writing and routed through the Owner. Interpretations and clarifications issued by the A/E or Owner shall not constitute authorization for any change to Contract Sum or Contract Time absent a written Change Order issued pursuant to Article 14.

4.14 The A/E will prepare Change Orders in accordance with Article 14, and will have authority to order minor changes in the Work as provided in Sub-Article 14.6. Minor changes issued by the A/E shall be in writing and shall not modify Contract Time or Contract Sum.

4.15 The duties, responsibilities and limitations of authority of the A/E as the Owner's representative during construction as set forth in the Contract Documents will not be modified or extended without the written consent of the Owner, the Contractor and the A/E.

4.16 In case of the termination of the employment of the A/E, the Owner shall appoint a replacement A/E whose status under the Contract Documents shall be that of the former A/E. All prior A/E decisions, approvals, and interpretations remain in full force unless modified in writing by the Owner.

Article 5
OWNER'S RIGHTS AND RESPONSIBILITIES

5.1 Information and Services Required of the Owner.

5.1.1 The Owner shall furnish a survey describing the legal limitations and utility locations for the site of the project. Such survey information is provided for the Contractor's convenience only and does not relieve the Contractor of its responsibility to verify existing conditions that affect the Work. **For Design-Build projects only**: The Design-Builder is responsible for independently verifying all site information affecting its design. The Owner provides survey or site data without warranty as to accuracy, completeness, or suitability for design.

5.1.2 The Owner shall secure and pay for necessary easements, and other property rights required for the construction of the Project. The Contractor shall promptly notify the Owner of any additional property rights required for its means, methods, staging, or access; failure to provide such notice waives any claim for delay or cost associated with unavailable property rights. The Contractor shall not rely on the availability of property rights or access not expressly provided by the Owner in writing.

5.1.3 Information under the Owner's control shall be furnished by the Owner with reasonable promptness after receipt from the Contractor of a written request for such information. All such requests shall be submitted through the A/E in writing, and the Contractor shall make such requests sufficiently in advance to avoid delay to the Work.

5.1.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, 2 sets of paper prints of Drawings and 3 sets of Specifications necessary for the execution of the Work. Electronic versions of the Drawings and Specifications may also be furnished, and the Contractor shall be responsible for verifying that such electronic documents match the Contract Documents issued for construction. In the event of any discrepancy between electronic documents and paper documents issued for construction, the paper documents shall govern unless otherwise clarified in writing by the Owner or A/E.

5.1.5 The Owner may forward instructions to the Contractor through the A/E or give instructions through the State Engineer. All Owner instructions shall be issued in writing. Verbal statements shall not modify the Contract Documents or constitute official direction.

5.1.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by the Owner or by separate contractors, Payments and Completion, and insurance in Articles 8, 10, 11 and 13. The Contractor shall not rely on any act or omission of the Owner or its representatives to relieve the Contractor of its obligations to perform the Work strictly in accordance with the Contract Documents.

5.2 Owner's Right to Stop the Work: If the Contractor fails to correct defective Work as required by Article 15 or fails to carry out the Work in accordance with the Contract Documents in any material respect, the Owner, in addition to its other remedies, by a written order signed by the State Engineer or by the State Engineer's designated representative may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. A stop-work order does not constitute acceptance of defective or non-conforming Work, and does not entitle the Contractor to additional time or compensation. The Contractor shall immediately secure the Work, protect installed materials, and maintain all safety measures during any stop-work period.

5.3 Owner's Right to Carry Out the Work: If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents in any material respect and fails within three working days after receipt of written notice from the Owner or in such time as may be established in written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, or if the Work is not being performed properly or in accordance with the scheduling provisions of the Contract Documents in any material respect, whether or not the Contractor is in default, the Owner may, after the expiration of such notice period and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the A/E's and State Engineer's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner upon demand. If, in the sole judgment of the Owner, an emergency exists as a result of the Contractor's default, neglect or failure to correct defective work, which in the Owner's opinion, requires more immediate corrective action than the Contractor is able to provide, then the Owner may, without notice to the Contractor, perform such corrective work or cause it to be performed by others. The Owner shall also have the right to carry out the Work, or any part thereof, during the period of any work stoppage without terminating the Contract. If the Owner wishes to exercise this right it will give the Contractor three days notice of its intent to do so. In any such case, an appropriate deductive Change Order shall be issued in accordance with Article 14, the amount of which shall not exceed an amount which equals the estimated direct cost, including the State Engineer's fees, of performing the work which the Owner elects to perform and the proportionate amount of the Contractor's fee associated therewith. The Contractor shall fully cooperate with the Owner and any separate contractors performing corrective work, including providing access, protection, and all necessary information. Contractor negligence or delay leading to Owner self-performance shall not justify any increase in Contract Time or Contract Sum. Owner performance of corrective work does not relieve the Contractor or Design-Builder of any design or construction warranty obligations, nor constitute acceptance of defective design documents.

5.4 Owner's Right to Access for Observation or Other Work: The Owner reserves the right of access to any part of the Work, at any time, for the purpose of observation, or testing, or to install other work, either with its own forces or with separate contractors. Such access is not to be construed to mean partial occupancy by Owner, and no claim for additional compensation by the Contractor because of such access or installation of work will be considered. Contractor shall cooperate with Owner during Owner's access or performance of work. The Contractor shall coordinate its Work to avoid conflict with Owner-performed or Owner-contracted work. Owner access does not relieve the Contractor of responsibility for protection of Work, for maintaining schedule, or for complying with the Contract Documents. Owner access or installation of separate work shall not relieve the Contractor of its obligation to maintain the Project site in a safe, coordinated, and orderly condition.

ARTICLE 6
CONTRACTOR'S RESPONSIBILITIES

6.1 Review of Contract Documents: The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner and the A/E any error, inconsistency or omission that it discovers or reasonably should discover. The Contractor shall not be liable to the Owner or the A/E for any damage resulting from any such errors, inconsistency or omission he may discover and report, nor for any damage resulting from any such errors, inconsistencies or omissions which he could not reasonably have discovered. The Contractor shall perform no portion of the work at any time without Construction Documents or, where required, Shop Drawings, Product Data or Samples for such portions of the Work bearing the A/E's appropriate action stamp. The Contractor shall not rely on verbal instructions or assumed interpretations, and all requests for clarification shall be made in writing through the RFI process sufficiently in advance to avoid delays. Commencing Work without required drawings, specifications, or approved submittals shall constitute performance at the Contractor's sole risk.

6.2 Supervision and Construction Procedures.

6.2.1 The Contractor shall supervise and direct the Work, using the skill and attention necessary to complete the Work in a workmanlike manner. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the contract. Neither the Owner nor the A/E shall have control over, or responsibility for, any such matters. This responsibility includes coordination among trades, verification of dimensions and field conditions, and ensuring that the Work is properly sequenced. **For Design-Build projects only**: Coordination responsibilities include full design coordination among all design disciplines, consultants, and trade packages prepared or directed by the Design-Builder. The Design-Builder is solely responsible for resolving conflicts in its design documents, including but not limited to architectural, structural, civil, mechanical, electrical, plumbing, fire protection, and specialty systems.

6.2.2 Nothing contained in the Contract Documents shall be interpreted by implication or otherwise as a direction by the A/E or the Owner to the Contractor as to construction means, methods, techniques, sequences and procedures. If there is express reference to such means, methods, techniques, sequences and procedures, it is solely for the purpose of insuring that the Work will be produced in accordance with the desired objectives as set forth in the Construction Documents but such express reference shall in no way relieve the Contractor of his responsibilities in connection therewith. If the Contractor does not wish to accept the responsibility for any means, techniques, sequences or procedures which are expressly set forth in the Construction Documents, then the contractor shall notify the A/E in writing of the actual means, methods, techniques, sequences and procedures which he will employ on the Work if these differ from those expressly referred to in the Construction Documents. All loss, damage or liability or cost of correcting defective Work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Contractor notwithstanding that any of the same shall have been referred to expressly in the Construction Documents. The Contractor shall not proceed with disputed means or methods until receiving written clarification from the Owner or A/E.

6.2.3 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors, Sub-subcontractors, materialmen and suppliers and their agents and employees, and other persons performing any of the Work. This responsibility includes coordination of overlapping scopes, protection of completed work, and ensuring adherence to all requirements of the Contract Documents.

6.2.4 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the A/E in his administration of the Contract, by the use or occupancy of part of the Work by the Owner as provided in Sub-Article 5.4, by the performance of work related to the Project by others as provided in Sub-Article 8.1, or by inspections, tests or approvals required or performed under Sub-Article 9.7 by persons other than the Contractor. A/E review does not constitute acceptance of the Work or shift responsibility for compliance away from the Contractor. **For Design-Build projects only**: A/E review, approval, or comment on any design submission shall not be construed as acceptance of design accuracy, completeness, or technical sufficiency and does not transfer any design liability to the Owner or A/E.

6.2.5 The Contractor shall retain a competent Registered Professional Engineer or Registered Land Surveyor, acceptable to the Owner and A/E, who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the site and shall establish sufficient lines and grades for the construction of associated work such as, but not limited to, roads, utilities and site grading. The Engineer or Land Surveyor shall certify as to the actual location of the constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries. The Contractor remains responsible for verifying dimensions affecting its Work, including adjoining or dependent Work performed by others.

6.2.6 The Contractor shall establish the building grades, lines, levels, column, wall and partition lines required by the various Subcontractors in laying out their work. The Contractor shall ensure that all layout work is coordinated among all trades and that discrepancies are resolved before installation proceeds.

6.2.7 The Contractor shall coordinate and supervise the work performed by Subcontractors to the end that the work is carried out without conflict between trades or jurisdictional disputes and so that no Subcontractor, at any time, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each other Subcontractor, any separate contractor, and the Owner, every reasonable opportunity for the installation of work and the storage of materials, and shall provide access to and the use of necessary loading dock and hoist facilities, adequate storage room and necessary utilities and other services. The Contractor shall prepare and maintain a coordinated installation plan and promptly resolve trade conflicts at no additional cost to the Owner. All coordination issues shall be raised and resolved before installation begins in any affected area.

6.2.8 Wherever the work of a Subcontractor is dependent upon the work of other Subcontractors, or the Contractor, the Contractor shall require the Subcontractor to:

6.2.8.1 Coordinate his work with the dependent work;

6.2.8.2 Provide necessary dependent data and requirements;

6.2.8.3 Supply and/or install items to be built into dependent work of others;

6.2.8.4 Make provisions for dependent work of others;

6.2.8.5 Examine dependent drawings and specifications;

6.2.8.6 Examine previously placed dependent work;

6.2.8.7 Check and verify dependent dimensions of previously placed work;

6.2.8.8 Notify Contractor of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of his work; and

6.2.8.9 Not proceed with his work until the unsatisfactory dependent conditions have been corrected.

Installation of Work by a Subcontractor in any given area shall constitute acceptance by the Subcontractor and Contractor of the previously placed dependent work.

6.3 Labor and Materials.

6.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The word "provide" shall mean furnish and install complete, including connections, unless otherwise specified. All connection charges, assessments or inspection fees which may be imposed by any public agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility, except the final water and sewer connection charges which shall be paid by the Owner. All materials and equipment shall be new unless otherwise specified and shall comply with all applicable codes, standards, and manufacturer requirements. The Contractor shall not install any material or equipment that has not been approved, accepted, or otherwise authorized in accordance with the Contract Documents.

6.3.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. The Contractor shall be responsible to maintain and observe, and to require his Subcontractors to maintain and observe, sound labor practices, and shall require each Subcontractor to take all steps reasonably necessary to avoid labor disputes or stoppages. The Contractor shall remove from the Project any individual whose conduct or performance is unsafe, disruptive, or inconsistent with Project requirements.

6.3.3 Except in the event of emergency, no substantial field operations shall be performed outside of regular working hours without the prior notification of the A/E and the Owner. The Contractor will not be entitled to additional compensation for work performed outside of regular working hours except as otherwise expressly agreed in writing by the Owner prior to the performance of such overtime work. Additional compensation for such authorized overtime shall be limited to the direct cost of the premium portion only of such authorized overtime. No additional indirect cost or fee shall be included. Authorization for overtime must be in writing.

6.3.4 Substitutions

6.3.4.1 The products, materials and equipment of manufacturers referred to in the Specifications and on the Drawings are intended to establish the standard of quality and design required by the A/E; however, products, materials and equipment manufacturers, other than those specified, may be used, if equivalent and approved in writing by the A/E.

6.3.4.2 It is deemed that the term 'or approved equal' is included after all products, materials and equipment referred to in the Specifications or on the Drawings. Following award of a firm-fixed-price Contract based on competitive sealed bidding, substitutions shall not be proposed for the purpose of altering bid pricing unless expressly requested by the Owner.

6.3.4.3 The Owner in consultation with the A/E will be the sole judge of equivalency of proposed substitute products, materials, and equipment. The A/E will make written recommendation of acceptance or rejection to the Owner. The Owner will then authorize the A/E to issue to the Contractor written approval or rejection of the substitution.

6.3.4.4 If the Contractor desires to use a substitute item, he shall make application to the A/E in writing in sufficient time (having regard to the progress of the Work, the period of delivery of the goods concerned and adequate time for the Owner's and A/E's review) stating and fully identifying the proposed substitute, cost changes (if any), and submitting substantiating data, sample, brochures, etc. of item proposed. It is the Contractor's responsibility to provide sufficient evidence by tests or other means to support any request for approval of substitution.

6.3.4.5 Prior to proposing any substitute item, the Contractor shall satisfy himself that the item he proposes is, in fact, equal to that specified, that it will fit into the space allocated, that it affords comparable ease of operation, maintenance and service, that its appearance, longevity and suitability for the climate and use are comparable to that specified, and that the substitution is in the Owner's best interest. Requests for substitutions shall include complete technical data, comparison matrices, and evidence of equivalency. Incomplete submissions will be rejected without review.

6.3.4.6 The burden of proof that a proposed substitution is equal to a specified item shall be upon the Contractor, who shall support his request with sufficient test data and other means to permit the State Engineer and A/E to make a fair and equitable decision on the merits of the proposal. Any item by a manufacturer other than those cited in the Contract Documents, or of brand name or model number or of generic species other than those cited in the Contract Documents will be considered a substitution.

6.3.4.7 Materials and methods proposed as substitutions for specified items shall be supported by certification of their acceptance for use by an authority, person or persons having jurisdiction over the use of the specified material or method.

6.3.4.8 Acceptance of substitutions shall not relieve the Contractor from responsibility for compliance with all the requirements of the Construction Documents. The Contractor shall be responsible at his own expense for any changes in other parts of the work of his Contract or the work of other contractors caused by his substitutions, including cost of all design and redesign services related thereto incurred by the A/E and his consultants.

6.3.4.9 The Contract completion time shall not be extended by any circumstances resulting from a proposed substitution, nor shall the Contractor be entitled to any compensation for any delay caused thereby or related thereto.

6.3.4.10 All costs for the evaluation of proposed substitutions, whether approved or not, shall be borne by the Contractor.

6.3.5 All materials and equipment shall be delivered, handled, stored, installed and protected to prevent damage in accordance with best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with Contract Document requirements. The Contractor will store packaged materials and equipment in their original and sealed containers, marked with the brand and manufacturer's name, until ready for use, and deliver materials and equipment in ample time to facilitate inspections and tests prior to installation. The term 'delivery' in reference to any item specified or indicated, means the unloading and storing with proper protection at the project site. Damaged materials or equipment will be rejected and removed from the site by the Contractor. The Contractor shall protect all materials from weather, damage, contamination, and misuse, and assumes all risks for stored materials until Substantial Completion.

6.3.6 Before ordering materials, equipment, or performing Work, the Contractor shall verify indicated dimensions. If a discrepancy exists, the Contractor shall notify the A/E of same immediately. The A/E will then clarify the intended design. The Contractor shall take field measurements required for the proper fabrication and installation of the Work. Upon commencement of any item of Work, the Contractor shall be responsible for dimensions related to such item of Work. The Contractor shall verify all dimensions affecting its Work and resolve discrepancies prior to fabrication or installation. Verification responsibilities are continuous throughout the Project and shall not be limited to initial field measurements. **For Design-Build projects only**: Verification obligations include confirming that all materials, equipment, and systems selected by the Design-Builder conform to the Performance Criteria and the Design-Builder's own design documents.

6.4 Guarantees/Warranty.

6.4.1 The Contractor guarantees and warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the A/E or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This guarantee/warranty is not limited by the provisions of Sub-Article 15.2. All warranties shall be submitted in an organized, indexed, and complete format acceptable to the Owner.

6.4.1.1 **For Design-Build projects only**: The Design-Builder warrants that all design services shall conform to the standard of care ordinarily exercised by licensed design professionals performing similar services in South Dakota. This design warranty is in addition to, and not in limitation of, the Design-Builder's construction warranties.

6.4.1.2 **For Design-Build projects only**: Design errors, omissions, conflicts, or lack of coordination discovered before or after Substantial Completion shall be corrected by the Design-Builder at no cost to the Owner.

6.4.2 The Contractor will indemnify the Owner against loss, including loss of use and lost revenues resulting from a breach of the Contractor's guaranty and warranty under Sub-Article 6.4.1, whether the loss arises before or after the Owner's acceptance of the Project.

6.4.3 Where the contract documents provide for equipment and material warranties in addition to the Contractor's guarantees' and warranty contained in Sub-Article 6.4.1, such warranties shall at a minimum:

6.4.3.1 Provide that the term of the warranty shall start on the date of substantial completion of the project or the date the Owner takes beneficial occupancy of any portion of the project that requires the use or start-up of the warranted equipment or material, whichever date occurs first.

6.4.3.2 Provide for complete repair or replacement of defective equipment or material;

6.4.3.3 Provide all materials, shipping, and labor necessary to repair or replace defective equipment or material at no expense to the Owner;

6.4.3.4 Provide that any replacement parts used in repairing or replacing defective equipment or material shall be new or in a like-new condition.

6.4.3.5 Provide for the complete repair or replacement of defective equipment or material within two weeks after receiving written notice of the defect, provided however, that the Owner can, at its sole discretion, grant an extension of time for good cause shown; and

6.4.3.6 Provide for no limitation of liability should the Contractor and/or manufacturer fail to repair or replace defective equipment or material within the time specified in Sub-Article 6.4.3.4 or should the remedy of repair or replacement otherwise fail.

6.4.3.7 Be construed under South Dakota law.

6.4.3.8 Provide that any legal action brought on the warranty shall be brought only in a South Dakota court.

6.5 Taxes: The Contractor shall pay all sales, consumer, use, excise, and other similar taxes for the Work or portions thereof which are to be provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective. The Contractor shall not apply any tax exemption unless expressly authorized in writing by the Owner. **For Design-Build projects only**: The Design-Builder is responsible for all taxes associated with materials and equipment incorporated into the design documents, regardless of whether procurement occurs before or after completion of design development.

6.6 Permits, Fees and Notices.

6.6.1 The Contractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time the bids are received. The State does not require that inspection and license fees be paid to a municipality for work performed on State property.

6.6.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work and shall indemnify the Owner and the A/E against all costs, fines and damages, and all actions, claims and proceedings, due to its failure to do so.

6.6.3 The Contractor and its Subcontractors shall acquaint themselves with all codes governing their work and shall complete the work in conformance with all codes governing their work.

6.6.4 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Owner and the A/E in writing, and any necessary changes shall be accomplished by appropriate modification.

6.6.5 If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner and the A/E, he shall assume full responsibility therefor and shall bear all costs attributable thereto. All notices required under permitting or code compliance shall be submitted in writing, and the Contractor shall maintain copies in its project records.

6.7 Superintendent: The Contractor shall employ a competent superintendent and necessary assistants all of whom are acceptable to the Owner and who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case. The Superintendent shall not be changed without the Owner's consent. The Superintendent shall have full authority to act on behalf of the Contractor throughout the Project.

6.8 Construction Progress Schedule.

6.8.1 The Contractor shall, within 5 days, or within such time as determined by the A/E, after date of Notice to Proceed, prepare and submit to the A/E for approval a reasonable schedule showing the critical path, order in which the Contractor proposes to carry on the work and, the date on which he will start the several salient features (including procurement of materials, plant and equipment). The progress schedule shall indicate appropriately the percentage of work scheduled for completion at any time. If at any time the sequence of work is modified, the Construction Progress Schedule shall be updated. The Schedule shall be updated monthly and incorporate all Owner-approved changes. Failure to provide updated schedules may result in withholding of payment.

6.8.2 The Construction Progress Schedule shall reflect the time required for the preparation and processing of shop drawings and submittals and the lead time required in connection with the procurement of manufactured or processed materials and equipment. All Owner-approved changes to submittal sequencing or lead times shall be incorporated into the next schedule update.

6.8.3 The Contractor shall furnish sufficient forces, construction plant, and equipment, and shall work such hours, including night shifts, overtime operations, and Sunday and holiday work, as may be necessary to insure the prosecution of the work in accordance with the approved progress schedule.

6.8.4 Whenever major portions of the Work fall behind the planned schedule, the Owner and A/E shall be notified and advised of action being taken to return the project to its original schedule and such action shall be indicated on the Construction Progress Schedule which shall then be reissued. If, in the opinion of the A/E and Owner, the Contractor is not taking adequate steps to improve or maintain the progress of the work, the A/E and Owner may require him to increase the number of shifts, and/or overtime operations, days of work, and/or the amount of construction plant, all without additional cost to the Owner.

6.9 Documents and Samples at the Site: The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the A/E and Owner and shall be delivered to A/E for the Owner upon completion of the Work. Record documents shall be updated weekly and maintained in an electronic format acceptable to the Owner. Failure to maintain accurate records may result in withholding payment.

6.10 Shop Drawings, Product Data and Samples.

6.10.1 Shop Drawings are drawings, diagrams, schedules or other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

6.10.2 Product Data are illustrations, standard schedules, performance charts, instructions brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

6.10.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

6.10.4 The Contractor shall submit a schedule for submittal of Shop Drawings, Product Data and Samples to the A/E for review. The Contractor shall review, approve and submit to the A/E, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the A/E or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents, in accordance with the schedule reviewed by the A/E. The Contractor shall ensure all submittals are fully coordinated among trades and shall not submit partial, incomplete, or uncoordinated submittal packages.

6.10.4.1 The A/E reserves the right to review Shop Drawings, Product Data, Samples and submittals in a sequence consistent with the sequence of erection, installation and assembly of the various elements of the Work. Submittal review priority shall align with the sequence and critical path of the Work as reflected in the updated Construction Progress Schedule.

6.10.4.2 The Contractor's identification of Shop Drawings, Product Data and Samples shall include verification of information required in Sub-Articles 6.10.9.2 and 6.10.10.2.

6.10.4.3 No extension of time will be granted, nor will any consideration be given to claims arising out of the Contractor's failure to submit any Shop Drawing, Product Data, Samples or related submittals according to the schedule or otherwise in a manner which does not allow adequate lead time for A/E's review, or does not allow ample time for revision, resubmission and subsequent review by the A/E as required.

6.10.4.4 Composite Drawing: In the interest of coordination and expediting the work in critical areas, i.e. exterior wall components, mechanical/electrical systems, and other areas so requested by the A/E, the Contractor shall prepare and submit, to the A/E for review, Composite Drawings embodying the Work of the various trades and/or Subcontractors involved. After review, the Contractor shall distribute prints or reviewed Composite Drawings to affected trades and/or Subcontractors. The Contractor shall require that the involved trades and/or Subcontractors cooperate in preparation of the Composite Drawings to assure proper coordination between trades and/or Subcontractors. The participating trades and/or Subcontractors shall indicate their approval on these drawings.

For Design-Build projects only: Required design submissions at Schematic Design, Design Development, and Construction Documents phases are considered Submittals under this Article. All design submissions shall be complete, coordinated, and compliant with Performance Criteria before submittal.

6.10.5 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurement, and field construction criteria related thereto, checked the Shop Drawings, Product Data, and Samples for complete dimensional accuracy; that he has checked to insure that work contiguous with and having bearing on the work shown on the Shop Drawings is accurately and clearly shown, that he has checked the Shop Drawings against the Composite Drawings prepared by the Contractor, that the Work has been coordinated and that the equipment will fit into the assigned spaces, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Construction Documents. Uncoordinated submittals may be returned without review and shall not justify delay or additional cost.

6.10.5.1 Any Shop Drawing, Product Data or Sample submitted without Contractor's approval will not be processed for review by the A/E, but will be returned to the Contractor for his compliance with the above procedures, in which event it will be deemed that the Contractor has not complied with the provisions herein specified and the Contractor shall bear the risk of all delays as if no Shop Drawing, Product Data and Sample had been submitted.

6.10.5.2 Shop Drawings shall bear a coordination and approval stamp signed by the Contractor and each contiguous Subcontractor, which shall confirm the representations set forth in Sub-Article 6.10.5. Shop Drawings shall bear the seal of a registered professional engineer or A/E when required by the Specifications or State Law.

6.10.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Construction Documents by the A/E's approval of Shop Drawings, Product Data or Samples under Sub-Articles 4.10 and 6.10.9 unless the Contractor has specifically informed the A/E in writing of such deviation at the time of submission and the A/E has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the A/E's approval thereof. Any deviation shall also be indicated on such Shop Drawing, Product Data, Sample, or related submittal by circling or other approved means. The Contractor shall promptly revise and resubmit any submittal that deviates from the Contract Documents, and such deviations shall not delay or excuse performance of the Work. **For Design-Build projects only**: A/E approval of any Shop Drawing, Product Data, or Sample does not constitute acceptance of design accuracy or relieve the Design-Builder of responsibility for coordination of its design documents.

6.10.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the A/E on previous submittals. Unless such written notice has been given, the A/E's Action on a resubmitted Shop Drawing, Product Data, or Sample shall not constitute Review and Action of any changes not requested on the prior submittal.

6.10.8 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the A/E as provided in Sub-Article 6.10.9. All such portions of the Work shall be in accordance with approved submittals.

6.10.8.1 No Shop Drawing, Product Data or Sample shall be issued to the field without the A/E's Action Stamp affixed thereto.

6.10.9 Shop Drawing & Product Data Procedures

6.10.9.1 Shop Drawing Requirements: Shop Drawings shall show design, materials (kind, thickness and finish), dimensions, connections, rough openings, routing details, and other details necessary to insure that they accurately interpret Contract Drawings and Specifications and also show adjoining work in such detail as required to provide proper connection with same. Shop Drawings shall be numbered consecutively and insofar as possible shall be uniform in size.

6.10.9.2 Identification: All Shop Drawings and Product Data shall be identified with the name of the Project, Project Number, building or buildings for which the Shop Drawings and Product Data are being submitted, and shall contain the A/E's name, Contractor's name, Subcontractor's name, date of submittal, drawing number, revision, if any, as well as the Specification Section under which the Work is to be performed and the Drawing and detail numbers that relate to the Shop Drawings and Product Data.

6.10.9.3 Transmittals: All Shop Drawings and Product Data shall be accompanied by a letter of transmittal from the Contractor setting forth the same identification information as required above under Sub-Article 6.10.9.2. Contractor shall number transmittals consecutively in sequence with the sample transmittals and shall indicate the Submittal Procedure number being followed. Transmittal shall also indicate if Shop Drawing is resubmittal and note A/E's file number for original submittal.

6.10.9.4 Submittal Procedures: The Contractor shall submit copies of Shop Drawings and Product Data to the A/E in accordance with the Submittal Procedures listed below.

6.10.9.4.1 Shop Drawings and Product Data shall be sent by the Contractor to the Architect/Engineering team.

6.10.9.4.2 Shop Drawings and Product Data can be sent via an electronic method (email or other electronic platform) or via original paper copy. Contract, Architect/Engineer, and Owner shall agree on submittal method (email, other electronic platform, original paper copy, etc.).

6.10.9.4.3 Shop Drawings and Product Data shall be clearly legible and physical product samples shall be provided whenever necessary.

6.10.9.5 A/E's Distribution & Stamp: Following the A/E's review of each Shop Drawing and Product Data submission, the A/E will retain a copy of the submittal for their records as well as return a copy to the Contractor and Owner with the A/E's stamp and signature affixed thereto, annotated as follows:

6.10.9.5.1 "A Action": "A Action" means the submission is in general conformance with the design concept. Construction, fabrication and/or manufacture can proceed subject to the provision that the Work shall be in accordance with the requirements of the Construction Documents. Final acceptance of the Work shall be contingent upon such compliance.

6.10.9.5.2 "B Action": "B Action" means the submission is in general conformance with the design concept subject to notations by the A/E on the returned Shop Drawings. Construction, fabrication and/or manufacture can proceed subject to the provision that the Work shall be carried out in compliance with all annotations and/or corrections indicated on the returned Shop Drawings and Product Data and in accordance with the requirements of the Construction Documents. Final acceptance of the Work shall be contingent upon such compliance.

6.10.9.5.3 "C Action": "C Action" means that the Contractor shall revise and resubmit the Shop Drawings and Product Data in accordance with all annotations and/or corrections indicated therein. Construction, fabrication and/or manufacture cannot proceed. Shop Drawings and Product Data bearing "C Action" stamp shall not be permitted on the Project Site.

6.10.9.5.4 "D Action": "D Action" means that the submission is rejected for nonconformance with the design concept and the Contractor shall make a new submittal which shall comply with the requirements of the Construction Documents. Construction, fabrication and/or manufacture cannot proceed. Shop Drawings and Product Data bearing "D Action" stamp shall not be permitted on the Project Site.

6.10.9.6 Contractor's Distribution: When transparencies are returned "A Action" or "B Action", the Contractor shall obtain and provide such number of prints to the Subcontractor as may be required by the Subcontractor for his distribution. The Contractor shall have copies of all "A Action" or "B Action" Shop Drawings and Product Data at the Project Site at all times and shall make them available to the A/E's representatives.

6.10.9.7 Cost of Submittal and Distribution: All charges in connection with the delivery of Shop Drawings and Product Data to the A/E shall be paid by the Contractor. All charges in connection with the distribution of Shop Drawings and Product Data to the Contractor shall be paid by the Contractor.

6.10.10 Samples Procedures

6.10.10.1 Sample Requirements: Where possible, all samples required for a particular Specification Section shall be submitted together.

6.10.10.1.1 Samples shall be submitted from the same source which will supply the actual job. Samples shall be of adequate size to show quality, type, color, range, finish, texture and other specified characteristics.

6.10.10.1.2 Samples of materials or products which are normally furnished in containers or packages, which bear descriptive labels and/or application or installation instructions, shall be submitted with such labels and/or instructions.

6.10.10.2 Identification: All Samples shall be labeled, tagged, or otherwise clearly identified. Labels or tags shall set forth the name of the Project, the project number, buildings for which the Sample is being submitted, A/E, Contractor, Subcontractor, and/or supplier, the name of the manufacturer, fabricator, or processor, the trade designation, grade and quality of the material or product, the date of submittal, and specific identification of each sample and a precise reference to the Specification Article and Sub Article wherein the material, product, or element of the Work is specified. Each label or tag shall have sufficient clear space to permit the application of the approval stamp of the Contractor, and the action stamp of the A/E.

6.10.10.3 Transmittals: All samples shall be accompanied by a letter of transmittal from the Contractor setting forth the same identification information as required above under Sub-Article 6.10.4.2. Contractor shall number transmittals consecutively in sequence with the Shop Drawings and Product Data transmittals. Where appropriate, test data and/or manufacturers' certificates shall be referenced in and forwarded with the letter of transmittal. Samples without accompanying certificates or test data will be returned without action.

6.10.10.4 Submittal Procedure: The Contractor shall submit the number of samples as indicated below:

6.10.10.4.1 In the event that a range of variations in texture, graining, color or other characteristics may be anticipated in furnished materials, assemblies, or elements of the Work, a sufficient number of samples of such materials or products shall be submitted to indicate the full range of characteristics which will be present in the materials or products proposed for the Work. Any such materials or products delivered or erected prior to approval of full range samples shall be subject to rejection.

6.10.10.4.2 All Samples shall be submitted in triplicate to the A/E's home office, or where directed by the A/E, except as otherwise set forth in other Sections of the Contract Documents.

6.10.10.5 A/E's Distribution & Stamp: Following the A/E's review of each Sample submission, the A/E will return one set of each submission to the Contractor with the A/E's stamp and signature affixed thereto and annotated in a manner conforming to the convention established in Sub-Article 6.10.9.5.

6.10.10.6 Contractor's Distribution: When Samples are returned 'Action A' or 'Action B', the Contractor shall retain such Samples in a suitable place at the Project Site for use by the Contractor, his Subcontractors, the A/E and his authorized representatives to insure that all work is being installed in accordance with these Samples. The remaining Samples will be retained by the A/E.

6.10.10.7 Cost of Submittal and Distribution: All charges in connection with the delivery of Samples to the A/E's home office or where directed by A/E (and all charges in connection with the subsequent distribution thereof by the A/E) shall be paid by the Contractor.

6.11 Use of Site.

6.11.1 The Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with any unnecessary or surplus materials or equipment or debris.

6.11.2 Notwithstanding the designation of construction limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain portions or phases of the Work may require that certain operations be carried out beyond such designated limits. Trenching, utility work, site development, landscaping and all other work, if required beyond such designated limits, shall be scheduled in such a manner as to cause or occasion a minimum of inconvenience or disturbance or interference with the normal operation of the Owner, abutters, and the public. The Contractor shall obtain the Owner's prior approval for such operations, prosecute such operations expeditiously and restore the affected area and other areas needed for access to their original condition immediately upon completion of such operations, unless otherwise specified herein.

6.11.3 All operations, including pumping, draining and control of surface and ground water shall be carried out so as to avoid endangering the Work of any adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof.

6.11.4 The Contractor shall confine operations at the site to work related activities. The Contractor shall not use the site for lodging or as a personal residence.

6.12 Cutting and Patching of Work.

6.12.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

6.12.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors or adjacent facilities by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor his consent to cutting or otherwise altering the Work.

6.12.3 Structural elements of the Work shall not be cut, patched or otherwise altered or repaired without prior written authorization by the A/E.

6.12.4 Authorization to proceed with remedial operations for any damaged or defective element or portion of the Work shall not constitute a limitation or a waiver of the A/E's right to require the removal and replacement of any work which fails to fulfill the requirements of the Contract Documents.

6.13 Cleaning Up.

6.13.1 The Contractor at all times shall keep the Site and related streets free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as his tools, construction equipment, machinery and surplus materials. All waste and rubbish shall be removed from the Site at least weekly and more often if necessary.

6.13.2 If the Contractor fails to maintain a clean and safe Project and/or fails to clean up at the completion of the Work, the Owner may do so as provided in Sub-Article 5.3 and the cost thereof shall be charged to the Contractor.

6.14 Communications: Except where otherwise directed by the A/E or otherwise provided in the Contract Documents, the Contractor shall forward all communications to the Owner through the A/E. All Contractor communications, notices, and requests shall be in writing.

6.15 Royalties and Patents: The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the A/E and Owner in writing.

6.16 Indemnification.

6.16.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, the A/E and its consulting engineers, and their respective successors, agents and employees from and against all claims, damages, liabilities, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any tortious act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge or otherwise reduce any other right or obligation or indemnity which would otherwise exist as to any party or person described in this Sub-Article 6.16.

6.16.2 In any and all claims against the Owner, the A/E or any of its consultants, and their respective successors, agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article 6.16 shall not be limited in any way by any limitation on the amount or type of damages, compensations or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

6.16.3 The obligations of the Contractor under this Sub-Article 6.16 shall not extend to indemnification of the A/E or other design consultants employed by him, his consultant, agents or employees for damages, claims, losses or expenses arising out of: (a) the preparation or approval by the A/E or his design consultants of maps, drawings, opinions, reports, Change Orders, designs or specifications, or (b) the giving of or the failure to give directions or instructions by the A/E or his design consultants provided such giving or failure to give is the primary cause of the damage, claim, loss or expense.

6.16.4 The Contractor agrees to defend, indemnify and save the Owner, and A/E, or any of its consulting engineers, and their respective successors, agents or employees harmless from all costs, liabilities, damages or expenses, including reasonable attorneys' fees, incurred by them, by virtue of any claim or claims whatsoever filed by any Subcontractor, Sub-subcontractor, mechanic, laborer or materialman making claims arising from the Work by, through, or under the Contractor. The Contractor also hereby agrees to defend, indemnify and hold harmless, protect, and defend the Owner, the A/E and its consulting engineers, and their respective successors, agents or employees from and against any liability, claim, judgment, loss, damage, including but not limited to direct, indirect and incidental and consequential damages, attorneys fees, court costs and expense of collection, occasioned in whole or in part by the failure of the Contractor, its Subcontractor, or Sub-subcontractors to comply with any of the terms or provisions of the Contract Documents.

6.16.5 This article does not require the Contractor to indemnify the Owner, its officers, agents, or employees from claims or liability arising solely from the acts or omissions of the Owner, its officers, agents, or employees.

6.17 Default.

6.17.1 The Contractor shall be in default of the Contract if:

6.17.1.1 Contractor refuses or fails to prosecute the Work in accordance with the Contract Documents in any material respect;

6.17.1.2 Contractor fails to make proper payment to Subcontractors or for materials or labor (provided Owner shall have paid to Contractor any payments due from Owner in connection with such materials or labor);

6.17.1.3 Contractor disregards laws, ordinances, rules, building codes and regulations or orders of any public authority having jurisdiction;

6.17.1.4 Contractor fails to coordinate its work with other contractors and Subcontractors as required under Article 8 of these General Conditions;

6.17.1.5 Contractor fails to comply with the scheduling requirements of the Contract;

6.17.1.6 Contractor fails to promptly replace rejected material or correct rejected workmanship; or

6.17.1.7 Contractor fails in any material respect to observe any other terms, provisions, conditions, covenants and agreements in the Contract to be observed and performed on the part of the Contractor.

6.17.2 In the event of any default by Contractor under the Contract, Owner shall have the right to take such measures as it deems necessary to correct the default, at the Contractor's sole cost and expense and to deduct such costs, including but not limited to the State Engineer's and A/E's fees, as it may incur from amount otherwise owing to the Contractor, or to terminate the Contract in accordance with Sub-Article 16.2 of the General Conditions in addition to any and all other remedies that Owner may now or hereafter have. If the amounts owing to the Contractor are insufficient to cover the Owner's cost of corrections, the Contractor shall pay such amount promptly upon demand. The Contractor’s default obligations survive termination and final payment.

Article 7
SUBCONTRACTORS

7.1 Definitions.

7.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term Subcontractor does not include any separate contractor or his subcontractors. The Contractor shall not allow any Subcontractor to begin Work until the Subcontractor has reviewed the applicable Contract Documents and acknowledged in writing its obligations to comply with all requirements of the Contractor's Contract with the Owner.

7.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof. The Contractor shall be fully responsible for the acts and omissions of all Sub-subcontractors and lower-tier subcontractors to the same extent as if they were employees of the Contractor. All subcontracted Work, including design services in Design-Build delivery, shall conform to the same performance, quality, and compliance requirements applicable to the Contractor under the Contract Documents.

7.2 Award of Subcontracts and Other Contracts for Portions of the Work. The Contractor shall conduct an investigation of each of its proposed Subcontractor's capabilities to assure each is responsible and has the requisite experience, skill, physical plant, and financial strength necessary to perform each Subcontractor's respective Work. The Contractor shall not contract with any Subcontractor that is not responsible or does not have the requisite experience, skill, physical plant, and financial strength necessary to perform its part of the Work. The Contractor's investigation shall include verification of licensure, financial stability, past performance, safety record, and experience on comparable projects. The Contractor shall not award any subcontract that would result in delay, conflict, or adverse impact to the Project schedule or coordination of the Work. The Contractor shall ensure that all Subcontractors and Sub-subcontractors hold all licenses, registrations, and certifications required by South Dakota law for the performance of their respective scopes of Work. **For Design-Build projects only**: Subcontractors include all design consultants, engineers, architects, and specialty designers retained by the Design-Builder. The Design-Builder is fully responsible for the acts, omissions, coordination, integration, accuracy, and completeness of all such design professionals.

7.3 Subcontractual Relations.

7.3.1 The Contractor shall not include any provisions in its Contracts with its Subcontractors which will in any way prejudice the rights of the Owner and the Architect/Engineer under the Contract between the Owner and the Contractor. All subcontract agreements shall require Subcontractors to comply fully with the Contract Documents, including all safety, coordination, scheduling, and document-control requirements applicable to the Contractor. Subcontractors shall coordinate their Work with all other trades and shall promptly resolve inter-trade conflicts through the Contractor without impact to cost, schedule, or quality.

7.3.2 The Subcontract agreement shall require the Subcontractor to consent to any assignment of the Subcontract to the Owner in the event of a default by the Contractor hereunder. Such assignment shall include all warranties, guarantees, and obligations of the Subcontractor and shall ensure uninterrupted performance of the Work.

7.3.3 Nothing in Article 7 shall be construed to create a privity of Contract between the Owner and any Subcontractor. The Contractor shall indemnify and hold the Owner harmless from any claims, disputes, or liens asserted by Subcontractors or Sub-subcontractors arising out of the Work.

Article 8
WORK BY OWNER OR BY SEPARATE CONTRACTORS

8.1 Owner's Right to Perform Work and to Award Separate Contracts.

8.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with such work. Such work may include Work assigned to the Contractor under the Contract Documents which Work is not being performed properly or in accordance with the scheduling provisions of the Contract Documents, whether or not the Contractor is in default under Sub-Article 6.17 and whether or not the Owner has terminated the Contract under Sub-Article 16.2. If the Owner elects to exercise this right it will do so upon reasonable notice to the Contractor. There shall be an appropriate adjustment in amounts payable to the Contractor to reflect the Work undertaken by the Owner, which the parties shall confirm by Change Order in accordance with Article 14. If the Contractor claims that delay is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents. The Contractor shall fully coordinate its Work with Owner-performed or Owner-contracted work and shall not impede or delay such work. Any failure by the Contractor to cooperate with Owner-performed work shall not entitle the Contractor to additional cost or time. The Contractor shall affirmatively contact, coordinate with, schedule, and integrate all known Owner-retained separate contractors and Owner-performed work into the Contractor's Project schedule and sequencing of the Work. The Contractor shall proactively coordinate the timing, sequencing, and integration of Owner-performed or separately-contracted Work and shall adjust its operations as needed to avoid conflict or delay, without entitlement to additional compensation. **For Design-Build projects only**: Owner-performed work or work performed by separate contractors shall not modify or waive any Performance Criteria applicable to the Design-Builder's design obligations.

8.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement. Each Contractor shall cooperate and coordinate with all other contractors on the site to avoid interference, conflict, or delay.

8.1.3 The Owner will provide for the coordination of the work, of his own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Sub-Article 8.2. The Contractor shall participate in coordination meetings and promptly resolve issues affecting sequencing, access, logistics, or shared use of the site. Such cooperation includes proactive coordination meetings, communication, outreach, sequencing, and the integration of separate contractors' work into the Contractor's overall schedule.

8.2 Mutual Responsibility.

8.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity and all required facilities for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contact Documents. The Contractor shall adjust its operations as necessary to accommodate Owner or separate-contractor activities without additional cost to the Owner. The Contractor shall take all steps necessary to coordinate and sequence its Work with Owner-performed work or work performed by separate contractors, including adjusting its operations as needed to avoid interference or delay. The Contractor shall promptly notify the Owner in writing of any condition in the Owner's or separate contractor's Work that may affect the Contractor's performance or sequencing. **For Design-Build projects only**: The Design-Builder shall design and construct its Work to integrate with and accommodate all Owner-performed or separately contracted work identified in the Performance Criteria or Contract Documents.

8.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the A/E any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor to report shall constitute an acceptance of the Owner's or separate contractor's work as fit and proper to receive his Work, except as to defects which may subsequently become apparent in such work by others. The Contractor shall make such reports in writing and sufficiently in advance to avoid delay. The Contractor shall actively monitor the status of Owner-performed work and work by separate contractors and shall promptly initiate coordination to prevent conflicts, disruptions, or delays.

8.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor. The Contractor shall not assert claims for delay or disruption unless it has provided timely written notice identifying the specific impact and responsible party.

8.2.4 Should the Contractor wrongfully cause damage to the work or property of the Owner or of a separate Contractor, or to other work on the site, the Contractor shall promptly remedy such damage as provided in Sub-Article 12.2.5. Remedial work must be completed without delay and without cost to the Owner or separate contractor.

8.2.5 Should the Contractor wrongfully cause damage to the work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues or initiates a litigation proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall participate in the defense of such proceedings at the Contractor's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court costs which the Owner has incurred. The Contractor’s obligation to reimburse the Owner includes all costs of investigation, expert consultation, and administration incurred because of such dispute.

8.3 Owner's Right to Clean Up: If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up the Project, the Site and related streets and walks on a routine basis as required by Sub-Article 6.13, the Owner may clean up and charge the cost thereof to the contractors responsible therefore as the Owner shall determine to be just. Costs assessed under this Article shall be supported by documentation of actual expenses incurred by the Owner, and the Contractor shall promptly reimburse such amounts. The Contractor shall comply with all Owner directives regarding cleanup and shall not disrupt or interfere with cleanup work performed by the Owner or others.

Article 9
MISCELLANEOUS PROVISIONS

9.1 Governing Law: The Contract shall be governed by South Dakota Law.

9.2 Successors and Assigns: The Owner and the Contractor each binds himself, his successors, assigns and legal representatives to the other party hereto and to the successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any money due or to become due to him hereunder, without the previous written consent of the Owner. Any consent by the Owner to an assignment shall be in writing and shall not relieve the Contractor of its obligations unless expressly stated. Any assignment or delegation of obligations by the Contractor, whether in whole or in part, shall not relieve the Contractor of responsibility for full performance of the Contract.

9.3 Written Notice: All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been given if sent pursuant to Article VII of the Agreement for Construction. All notices affecting cost, time, or scope shall also be sent to the A/E and the State Engineer. Changes to cost, time, or scope must be issued by written Change Order in accordance with Article 14. **For Design-Build projects only**: Written notice requirements include notices relating to interpretation of Performance Criteria, design clarifications, and design-phase submission schedules.

9.4 Claims for Damages: Should either party to the Contract suffer injury or damage because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within 14 days after the first observance of such injury or damage. Claims that do not include sufficient detail to identify the cause, responsible party, and specific cost or time impact shall be deemed incomplete and may be rejected without review. All claims shall include contemporaneous documentation sufficient to demonstrate cause, responsibility, and impact. **For Design-Build projects only**: Claims by the Design-Builder relating to design errors shall be limited to errors arising from the Owner's Performance Criteria itself, and shall not include errors arising from the Design-Builder's design documents, coordination, or engineering decisions.

9.5 Performance and Labor and Material Payment Bond: Before commencing the Work, the Contractor shall provide a Performance and Labor and Material Payment Bond in accordance with the requirements of the Instructions to Bidders.

9.6 Rights and Remedies.

9.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. This provision relates particularly to the Contractor's obligations under Sub-Article 15.2.2.

9.6.2 No action or failure to act by the Owner, A/E or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing. Waivers shall not be implied and shall only be effective if expressly stated in writing and signed by the Owner.

9.7 Tests.

9.7.1 If the Construction Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the A/E and Owner timely notice of its readiness so the A/E and Owner may observe such inspection, testing or approval. The Contractor shall perform and bear all costs of such inspections, tests and approvals, unless otherwise provided. The Contractor shall schedule, coordinate, and provide access for all testing and inspection required under the Contract Documents or by authorities having jurisdiction.

9.7.1.1 Where certain testing and inspection requirements are set forth in the various Sections of the Construction Documents to be performed at the expense of the Owner, the Owner will retain the services of testing laboratories, agencies, or consultants, to perform such tests or inspections and render such services as may be required to verify that the work fulfills the requirements and intent of the Construction Documents. Such services will be performed in a manner consistent with the requirements of the Owner and the various agencies having jurisdiction over the Work and in accordance with reasonable standards of architectural and engineering practice.

9.7.1.2 The Owner reserves the right to modify the scope of or to re-allocate any of the testing and inspection services specified in the various Sections of the Construction Documents to be performed by a testing laboratory, agency or consultant retained by the Owner in connection with the Work when it can be satisfactorily established that such adjustment in scope is consistent with the intent of the Construction Documents. In the event that the Contractor shall not concur with such modification of scope or re-allocation of such services, he shall immediately notify the A/E and Owner in writing. The Contractor shall provide required samples, protection, utilities, and access needed for Owner-retained testing agencies without additional cost to the Owner.

9.7.2 If the A/E determines that any Work requires special inspection, testing, or approval which Sub-Article 9.7.1 does not include, he will upon written authorization from the Owner, order the performance of such services by qualified independent testing laboratories, agencies or consultants as may reasonably be required or instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Sub-Article 9.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Construction Documents, the Contractor shall bear all costs thereof, including the cost of the tests, correction of the Work, the cost of retesting, and compensation for the A/E's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued. If testing or inspection reveals non-conforming Work, the Contractor shall promptly correct such Work and bear all resulting testing, inspection, and A/E review costs.

9.7.2.1 If A/E's observation or any inspection or testing undertaken pursuant to Sub-Article 9.7 reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply with (1) the requirements of the Construction Documents or, (2) with respect to the Performance of the Work, with laws, ordinances, rules, regulations, building codes or orders of any public authority having jurisdiction, the A/E will have the authority to order inspection and/or testing of all such items or elements of the Work, or of a representative number of such items or elements of the Work, as he may in his reasonable opinion consider necessary or advisable, and the Contractor shall bear all costs thereof, including the cost of the tests, correction of the Work, the cost of retesting, and the A/E's additional services, if any are required, made necessary thereby. However, neither the A/E's authority to act under Sub-Article 9.7 nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the A/E to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

9.7.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the A/E and the Owner.

9.7.3.1 The Contractor shall obtain and deliver promptly to the Owner any certificates of final inspection of any part of his Work or operating permits for any mechanical or electrical apparatus, such as elevators, escalators, boilers, air compressors, fire alarms, etc., which may be required by law to permit full use and occupancy of the premises by the Owner. Except as is otherwise provided in Sub-Article 10.1.3, receipt of such permits or certificates by the Owner shall be a condition precedent to Completion of the Work. Failure to timely obtain certificates or permits necessary for occupancy or operation shall constitute a breach of the Contractor’s obligations under the Contract.

9.7.3.2 Copies of reports issued as a result of services performed at the expense of the Owner pursuant to the provisions of this Article will be distributed to all parties to the Contract.

9.7.4 If the A/E or owner is to observe the inspections, tests or approvals required by the Contract Documents, they will do so promptly and, where practicable, at the source of supply.

9.7.5 In connection with testing and inspection services performed at the expense of the Owner, the Contractor shall provide Samples of materials and/or elements of the Work required as test specimens and shall provide incidental labor and facilities at the site reasonably required in support of such services. The Contractor shall maintain copies of all testing and inspection reports at the site and include them in the Closeout Documents. The Contractor shall promptly furnish additional samples when required for verification of corrective Work or disputed conditions.

9.7.6 The cost of testing services required solely for the convenience of the Contractor in his scheduling and performance of the Work shall be borne by the Contractor.

9.7.7 The cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.

9.7.8 If, during the course of the performance of any testing, inspection, control, balancing, adjusting, or similar work by the Contractor or an agent of the Contractor, it is the opinion of the A/E that the Contractor or said agent has failed to perform such work in a satisfactory manner, the Contractor shall, at his own expense, retain the services of a service organization which is satisfactory to the A/E for the performance of such work.

9.8 Litigation.

9.8.1 Unless otherwise specifically provided in this Agreement, all claims, counterclaims, disputes or other matters in question between the Owner and the Contractor arising out of, or relating to this Agreement, or the breach thereof, will be decided by direct negotiations, by non-binding mediation if the parties mutually agree, or in a circuit court of competent jurisdiction within the State of South Dakota. Notice of a request for mediation shall be sent in writing to the other party to this Agreement within a reasonable time after the claim, dispute, or other matter in question has arisen. If the party receiving notice of request does not agree to mediation in writing within 10 calendar days, it will be deemed that the parties do not mutually agree to mediate the matter. If the parties agree to mediate, a mediator to hear the dispute will be agreed upon by the parties. If agreement on a mediator cannot be reached, the State shall select the mediator.

9.8.2 The Contractor shall carry on the Work and maintain its progress during any dispute or litigation proceedings, and the Owner shall continue to make payments to the Contractor to the extent required by the Contract Documents and South Dakota Law. The Contractor shall continue performance of the Work during any dispute or litigation without interruption or delay.

Article 10
TIME

10.1 Definitions.

10.1.1 The Contract Time is the period of time allotted in the Construction Contract for Substantial Completion of the Work as defined in Sub-Article 10.1.3, including authorized adjustments thereto.

10.1.2 The date of commencement of the Work is the date established in the Notice to Proceed.

10.1.3 The date of Substantial Completion of the Work is the date certified by the A/E when construction is sufficiently completed in accordance with the Contract Documents so that the Owner can occupy and utilize the Project for the use for which it is intended, and such Work is fully completed in accordance with the Contract Documents except for minor items, adjustments or corrections which have no material effect upon the utilization, function or intrinsic values of the entire Project, including all of its mechanical, electrical and other systems and facilities. The Contractor shall not assert Substantial Completion until all systems and components necessary for safe occupancy and use are operational and compliant with the Contract Documents. **For Design-Build projects only**: Substantial Completion requires completion of all design-phase obligations necessary for occupancy, including approved Construction Documents, design revisions required for final acceptance, and all commissioning documentation required by Performance Criteria.

10.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

10.2 Progress and Completion.

10.2.1 All time limits stated in the Contract Documents, including the Construction Completion Schedule, are of the essence of the Contract.

10.2.2 The Contractor shall begin the Work on the date of commencement as defined in Sub-Article 10.1.2. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. Failure to prosecute the Work with sufficient forces or resources to achieve Substantial Completion within the Contract Time shall constitute a material breach. Failure to maintain progress in accordance with the approved schedule shall constitute a material breach of the Contract.

10.3 Delays and Extensions of Time.

10.3.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or the A/E, or by any employee of either, or by changes in the Construction Completion Schedule required by the Owner, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes not caused by the labor practices of the Contractor or any Subcontractor in contravention of applicable labor practices, fire, unusual delay in transportation, severe and unusual weather conditions not reasonably anticipatable, unavoidable casualties, or any other causes beyond the Contractor's control and not occurring due to the fault or neglect of the Contractor, any Subcontractor or any other person for whose acts the Contractor is responsible, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner shall determine, or the Owner may elect to require the Contractor to accelerate the Work, in which case the Contract Sum shall be increased by a Change Order in the amount of the direct cost to the Contractor (exclusive of overhead and profit of necessary over-time labor). Contractor delay arising from failure to coordinate with Subcontractors, suppliers, or Owner's separate contractors shall not justify an extension of Contract Time. **For Design-Build projects only**: Delays arising from the Design-Builder's design development, coordination among design disciplines, or preparation of Construction Documents are not excusable delays.

10.3.2 Any claim for extension of time shall be made in writing to the Owner with a copy to A/E not more than 10 days after the commencement of the delay; otherwise it shall be waived. In the case of continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect on such delay on the progress of the Work.

10.3.2.1 Such claims shall set forth in detail the nature of the circumstances which form the basis for each such claim, the date upon which each such alleged cause of delay began, or began to affect the timely prosecution of the Work, and ended, or ceased to have an adverse effect upon the timely prosecution of the Work, and the number of days extension of time requested as a consequence of each such alleged cause of delay. The Contractor shall provide such supporting documentation as the Owner may require, including, where appropriate, a revised Construction Completion Schedule indicating all of the activities affected by the circumstances which form the basis for the claim. Incomplete, unsupported, or speculative delay claims may be rejected without further review. The Contractor shall update the Construction Progress Schedule to reflect any Owner-approved time extension within the next monthly update.

10.3.2.2 The Contractor shall not be entitled to a separate extension of time as a consequence of each one of a number of causes of delay which may have a concurrent or interrelated effect on the progress of the Work.

10.3.2.3 The Owner shall have the right to defer his decision or decisions with reference to any claim or claims for an extension of time made pursuant to the provisions of this Article until the facts or circumstances which form the basis for such claim or claims may be fully assessed to the Owner's reasonable satisfaction.

10.3.2.4 Notwithstanding the provisions of Sub-Article 10.3.2, claims for an extension of time arising out of authorized changes in the Work shall be made in writing prior to or concurrent with the submission of the Contractor's proposal pursuant to such change. No extension of time arising out of changes in the Work will be granted subsequent to the date upon which the Contractor is authorized to proceed with such change or changes in the Work unless specific provisions governing a subsequent determination of an extension of time have been incorporated in such authorization to proceed with such change or changes in the Work. No claim for damages or separate compensation for delay arising from such change in the Work shall be recognized or be deemed valid, it being understood that any additional cost to the Contractor arising from such change shall be included in the amended Contract Sum set forth in such Change Order.

10.3.2.5 Time extensions will not be granted for rain, wind, snow, or other natural phenomena of normal intensity for the locality where work is performed. Determinations of the extent of delay attributable to unusual weather phenomena shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climactic range during the same period on the calendar. National Oceanic and Atmospheric Administration National Weather Service statistics for the locality or area where the work is performed shall be used to determine the five (5) year average weather conditions. Time extensions for weather delays do not entitle the Contractor to “extended overhead” recovery.

For Design-Build projects only: Claims for extensions of time relating to design-phase activities shall identify the specific Performance Criteria provision allegedly affected and shall include supporting design documentation demonstrating that the delay is not attributable to the Design-Builder’s design development.

10.3.3 If no agreement is made stating the dates upon which interpretations as provided in Sub-Article 4.13 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until 15 days after written request is made for them, and not then unless such claim is reasonable. The Contractor shall mitigate all delays within its control, including by accelerating the Work at its own cost when necessary to maintain the approved schedule.

10.3.4 Should the contractor fail to substantially complete the work within the time agreed upon in the contract documents, or within such extra time as may have been allowed by increases in the contract or by formally approved extensions granted by the owner, the contractor and the contractor’s surety shall be liable for and shall pay the owner the sums stipulated in the agreement for construction as liquidated damages for each calendar day of delay until the work is substantially complete. This sum is not a penalty but is liquidated damages due the owner from the contractor by reason of inconvenience to the public, added cost of engineering and supervision, and other items which have caused an expenditure of public funds resulting from the contractor's failure to complete the work within the time specified in the contract. In addition to liquidated damages, if any delay on the part of the contractor, any subcontractor or sub-subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable results in any claim by third parties against the owner or the A/E arising out of such delay, the contractor shall pay, satisfy, and discharge all losses, damages and expenses arising out of such claims, including attorneys' fees, and shall indemnify and hold harmless the owner and the A/E and their agents and employees from and against all costs, fees, losses, damages, and expenses arising out of such claims enforced against the owner or the A/E. Liquidated damages are cumulative and may be assessed independently for each phase or milestone identified in the Contract Documents.

10.3.5 No extension of time will be granted to the Contractor for any delay other than those described in Sub-Article 10.3.1.

10.3.5.1 Should the Contractor fail, refuse or neglect to supply a sufficiency of workmen or to deliver the materials with such promptness as to prevent delay in the progress of the Work, or fail in any material respect diligently to commence and prosecute the Work and to proceed in accordance with the approved construction schedule, or if the different parts thereof are not commenced, prosecuted, finished, delivered or installed in such manner as will insure substantial completion in accordance with the approved Construction Completion Schedule, or if the Contractor shall fail in the performance of any of his obligations under this Contract in any material respect, the Owner shall have the right to direct the Contractor, upon 3 days notice at the Contractor's cost and expense, to furnish such additional labor and to expedite deliveries of materials (or the Owner may furnish such labor and expedite such deliveries at the cost of the Contractor), which labor or expediting shall, in the Owner's opinion, be sufficient to speed up and complete the Work in accordance with the Construction Completion Schedule.

10.3.5.2 If such additional labor shall not be available, the Owner shall have the right to direct the Contractor at the latter's own cost and expense, to work overtime to such an extent as will be sufficient, in the Owner's opinion, to speed up and complete the Work as herein provided.

10.3.6 The Contractor's right to make a claim or claims for an extension of time, as provided in Sub-Article 10.3.1, shall not preclude the Contractor's right to make a claim for delay damages arising out of the Owner's significant interference, by action or inaction, with the Contractor's Work. Contractor's delay-related cost claims are barred unless the Contractor demonstrates that the Owner's actions were the sole and direct cause of such delay.

10.4 Beneficial Occupancy.

10.4.1 The Owner shall have the privilege of Beneficial Occupancy and the use and benefit of designated areas, subdivisions or portions of the Project prior to completion and acceptance of the entire Project, provided that such Beneficial Occupancy shall not unduly interfere with the Contractor's operations nor unduly delay him in completing the entire Work. Such occupancy and use shall be further subject to the provisions set forth herein and the provisions of SDCL § 5-18B-13.

10.4.2 In the event that the Owner desires to exercise the privilege of Beneficial Occupancy, he shall give reasonable notice to the A/E and the Contractor. If the A/E determines that such proposed occupancy is reasonable and proper, the Contractor shall cooperate with the Owner in providing services and facilities reasonably required for the health, safety and comfort of the occupants and other parties lawfully present and/or entering or leaving the premises. Mutually acceptable arrangements shall be made between the Owner and the Contractor with regard to procedures, terms and conditions governing the operation and maintenance of such services and facilities as may be utilized for the benefit of the Owner. The Owner will assume proportionate and reasonable responsibility for operation of systems, equipment and/or utilities required to provide such services, in part or in total, including proportionate and reasonable expenses of operation incidental thereto. No such Beneficial Occupancy shall accelerate the commencement of any warranty period on any system but only on the particular components being utilized.

10.4.3 The Owner's Beneficial Occupancy or use of such designated areas, subdivisions, or portion of the Work shall not constitute acceptance of systems, materials, or elements of the Work which are not in accordance with the requirements of the Contract Documents; nor relieve the Contractor from his obligations to complete the Work; nor for responsibility for loss or damage due to or arising out of defects in, or malfunctioning of, systems, materials, equipment, or elements of the Work; nor from other unfulfilled obligations or responsibilities of the Contractor under the Contract. If, however, damage results solely from any act of the Owner, the Owner will assume its proportionate responsibility for such damage. Beneficial Occupancy shall not relieve the Contractor from completing remaining Work, correcting defective Work, or complying with all closeout obligations. Beneficial Occupancy shall not change the dates for Substantial Completion or Final Completion unless expressly modified by Change Order.

Article 11
PAYMENTS AND COMPLETION

11.1 Contract Sum: The Contract Sum is stated in the Agreement for Construction.

11.2 Schedule of Values: Before the first Application for Payment, the Contractor shall submit to the Owner and A/E a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner and A/E may require. The format and number of copies of such Applications for Payment shall be as directed by the Owner and the A/E. This schedule, unless objected to by the Owner, shall be used as a basis for the Contractor's Applications for Payment. The Schedule of Values shall not include front-loading and shall reasonably allocate costs in proportion to actual value of the Work. **For Design-Build projects only**: The Schedule of Values shall include separate line-items for design services (including Schematic Design, Design Development, and Construction Documents), permitting, engineering disciplines, and construction Work. The Design-Builder shall not combine design and construction values, and shall provide supporting documentation demonstrating the basis of each design line-item.

11.3 Monthly Application for Payment.

11.3.1 No later than the 5th day of each month the Contractor shall submit to the A/E its monthly itemized application for Payment. The Contractor shall not submit more than one pay application per month. The Contractor must make its monthly Application for Payment on AIA Document G702 itemized and supported by such evidence as will show the Contractor's right to the payment claimed, including but not limited to receipts, releases, and waivers of liens. Incomplete, inaccurate, or unsubstantiated payment applications may be returned without processing.

11.3.1.1 Unless otherwise provided in this Agreement, payments shall be made on account of materials and equipment delivered to and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures and documentation satisfactory to the Owner to establish the Owner's title to such materials and equipment, or to otherwise protect the Owner's interest. Materials stored off-site shall remain segregated, labeled, and accessible for Owner inspection.

11.3.1.2 Notwithstanding Owner's payment for materials and equipment as provided for in Sub-Article 11.3.1.1, or the Owner's approval of any Contractor storage or transit arrangement in conjunction with such payment, prior to Substantial Completion of the Work, whether the materials and equipment are stored on-site or off-site, or are in-transit, the Contractor remains solely responsible for:

11.3.1.2.1 any loss, damage, theft, or destruction of the material and equipment;

11.3.1.2.2 the quality and conformity of the materials and equipment with the requirements of the Contract Documents;

11.3.1.2.3 the proper storage, transportation, and safeguarding of all materials and equipment;

11.3.1.2.4 Insuring the materials and equipment against loss as required by Article 13; and

11.3.1.2.5 all costs associated with storage, insurance, and transportation of the materials and equipment.

The Contractor assumes all risk of loss for materials stored off-site or in transit until Substantial Completion.

For Design-Build projects only: Payment for stored materials shall not be made for materials procured solely to advance the Design-Builder's design decisions or for materials not yet incorporated into approved Construction Documents.

For Design-Build projects only: Monthly Applications for Payment may include payment for completed design-phase deliverables upon submission and Owner acceptance of Schematic Design, Design Development, or Construction Documents as defined in the Contract Documents and Performance Criteria.

11.3.2 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. Title transfers subject to the Owner's right to reject defective or non-conforming Work or materials. **For Design-Build projects only**: Title to all design documents, calculations, models, and digital data produced by the Design-Builder or its design professionals shall vest in the Owner upon submission of each design phase deliverable.

11.3.3 Monthly applications received after the 5th day of the month will be treated as if submitted on the 5th day of the following month. Late applications shall be processed with the next monthly payment cycle and shall not justify delay or additional compensation.

11.4 Recommendation for Payment.

11.4.1 By the 15th of each month, the A/E will review the Contractors Monthly Application for Payment and make his certification to the Owner with a copy to the Contractor, for such amount as the A/E believes is properly due, or notify the Contractor in writing his reasons for withholding a Certificate as provided in Sub-Article 11.6.1. The A/E may reject or adjust a payment application to exclude amounts for unperformed Work, defective Work, or improper storage of materials.

11.4.2 The issuance of a Certification for Payment will constitute a representation by the A/E to the Owner, based on his observations at the site as provided in Sub-Article 4.3 and the data comprising the Monthly Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the result of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that the A/E believes that the Contractor is entitled to payment in the amount recommended. However, by issuing a Certification for Payment, the A/E shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum. The Owner will not be bound by the amount stated in the A/E's Certification for Payment in making determinations of amounts properly payable to the Contractor. Certification does not relieve the Contractor from responsibility for the accuracy or completeness of Work represented in the payment application.

11.5 Progress Payments.

11.5.1 Based upon his review of the Monthly Application for Payment, and the A/Es Certification, the Owner shall make progress payments to the Contractor in such amounts as the Owner reasonably determines are properly due less the aggregate of previous payments in each case. Payment of amounts determined to be due by the Owner under each Monthly Application for Payment shall be due to the Contractor 20 days after the 15th of each month. unless the A/E's certification was delayed by following the procedures of Article 11.6.1. In such case, payment shall be 25 days after the 15th of each month. The Owner shall at all times retain an amount sufficient to complete the Work pursuant to SDCL .§§ 5-18B-11 and 5-18B-13. If the Owner retains any portion of a certified progress payment that is properly due and undisputed beyond the time for payment specified herein and for reasons other than those required by statute, the Owner shall owe and pay the Contractor four percent (4%) interest compounded annually on the retained amount starting from the date payment first becomes due under this article. The Owner may withhold payment for failure to provide timely schedule updates, accurate Record Documents, or required submittals. Payments may be withheld for failure to maintain accurate Record Documents or for failure to provide updated schedules required under Article 6.8.

11.5.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled reflecting any amounts actually withheld, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall not withhold retainage from its Subcontractors unless retainage is withheld from the Contractor by the Owner. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

11.5.3 The Owner shall, on request, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Owner on account of Work done by such Subcontractor.

11.5.4 Neither the Owner nor the A/E shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

11.5.5 No Certification for Payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute acceptance or approval of any Work not in accordance with the Contract Documents. Owner use or occupancy shall not constitute acceptance of Work or waive any rights under the Contract.

11.6 Payments Withheld.

11.6.1 The A/E may decline to certify the full payment of the amount requested by the Contractor in his monthly application to the extent necessary to reasonably protect the Owner. If the A/E is unable to certify payment in the amount of the Application, he will, within 10 days after receipt of the monthly application, notify the Contractor in writing the reasons he cannot make such a certification. If the Contractor and the A/E cannot agree on a revised amount within five days of A/E sending written notice, the A/E will promptly issue a Certification for Payment for the amount for which he is able to certify to the Owner pursuant to Sub-Article 11.4.2. The Contractor shall promptly provide any additional documentation requested by the A/E or Owner to support any portion of a payment application. The A/E may also decline to certify payment because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certification for Payment previously issued, and the Owner may withhold payment of all or any part of an Application for Payment, to such extent as may be necessary to protect the Owner from loss because of:

11.6.1.1 Defective work not remedied;

11.6.1.2 Third party claims filed or reasonable evidence indicating probable filing of such claims;

11.6.1.3 Failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment;

11.6.1.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

11.6.1.5 Damage to the Owner or another contractor;

11.6.1.6 Reasonable evidence that the Work will not be completed within the Contract Time;

11.6.1.7 Failure to carry out the Work in accordance with the Contract Documents;

11.6.1.8 A lien or attachment is filed and such lien is not discharged within 5 days of demand from the Owner;

11.6.1.9 Failure of the Contractor and/or of the Mechanical or Electrical Subcontractors to comply with the mandatory requirements for maintaining "up-to-date" Record Drawings;

11.6.1.10 Incomplete or otherwise inadequate Application for Payment; or

11.6.1.11 Reasonable evidence that the Contractor is in material breach of his obligations under the Contract.

11.6.2 When the above grounds in Sub Article 11.6.1 are removed, payment shall be made for amounts withheld because of them. Once grounds for withholding are removed, payments will be released in the next scheduled payment cycle.

11.7 Substantial Completion.

11.7.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is Substantially Complete as defined in Sub Article 10.1.3 the Contractor shall prepare for submission to the A/E and Owner a list of items to be completed or corrected. The failure to include any item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the A/E and Owner on the basis of an inspection determines that the Work or designated portion thereof is Substantially Complete, the A/E will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities and damage to the Work, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties and Guarantees required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate. The Contractor shall submit a draft Substantial Completion checklist for review at least five days prior to requesting inspection. **For Design-Build projects only**: Substantial Completion additionally requires delivery of all design-phase items required for safe occupancy and system operation, including final Construction Documents incorporating all design changes to date.

11.7.2 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the A/E, the Owner shall make payment, reflecting adjustment for defective or incomplete work, if any, for such Work or portion thereof, as provided in the Contract Documents. Double the amount necessary to complete the Work shall be retained by the Owner pursuant to SDCL § 5-18B-13. The Owner may retain amounts necessary to ensure timely completion of punch-list items.

11.8 Final Completion and Final Payment.

11.8.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the A/E and Owner will promptly make such inspection and, when they find the Work acceptable under the Contract Documents and the Contract fully performed, the A/E will promptly issue a final Certificate for payment stating that to the best of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate, is due and payable. The A/E's Final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Sub-Article 11.8.2 have been fulfilled. Final payment shall not be requested until all Closeout Documents, warranties, testing records, and training materials have been delivered to the Owner.

11.8.2 The final payment shall not become due until the Contractor submits to the A/E and Owner (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety to final payment, (3) if required by the Owner, other data establishing payment or satisfaction of all such obligation, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner, (4) an Unemployment Compensation Contribution Certificate from the South Dakota Department of Labor, and (5) a full and complete release of the Owner from all liability under the Contract and otherwise, except to the extent provided in Sub-Article 11.8.4. If the Contractor fails to furnish such releases or waivers of liens as the Owner reasonably requires to determine that there are no outstanding liens, the Owner may require that Contractor, as a condition of final payment to furnish a bond satisfactory to the Owner to indemnify the Owner against any such liens. Cost of such bond shall be borne by the Contractor. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. The Contractor shall provide lien waivers from all Subcontractors and suppliers as a condition of final payment. All Closeout Documents submitted by the Contractor shall be complete, accurate, and in the formats required by the Owner prior to final payment. **For Design-Build projects only**: Final payment additionally requires submission and Owner acceptance of Record Drawings (hard copy and electronic formats), Record Specifications, and AutoCAD-compatible digital files, as specified in the Design-Build Agreement.

11.8.3 Owner shall make final payment of all sums due to the Contractor 30 days after the completion and acceptance of the project by the Owner and Contractor's compliance with Article 11.8.2 above. If the Owner fails to make final payment to the Contractor within the time specified herein, the Owner shall pay the Contractor interest at the rate of four percent (4%) compounded annually on the amount retained starting from the date final payment first becomes due. Interest applies only to undisputed amounts properly due and not withheld pursuant to the Contract Documents.

11.8.4 The acceptance of final payment by the Contractor shall constitute a complete and unconditional waiver and release of any and all claims by the Contractor of whatever nature, and regardless whether they are then known or unknown, and a complete and unconditional release of the Owner and every person for whom the Owner is responsible for any and all matters related to the Contract or otherwise, except those claims which have been made in writing and identified by the Contractor as not having been settled at that time. Claims not reserved in writing prior to final payment are waived, even if the Contractor later asserts that it lacked complete information at the time of final payment.

Article 12
PROTECTION OF PERSONS AND PROPERTY

12.1 Safety Precautions and Programs: The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, and for safeguarding all adjacent properties and facilities. Safety precautions shall remain in effect regardless of Owner access, Owner-performed Work, or work by separate contractors.

12.2 Safety of Persons and Property.

12.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

12.2.1.1 All employees on the Work and all other persons who may be affected thereby;

12.2.1.2 All the Work and all materials and equipment to be incorporated therein, whether in storage or off the site, under the care, custody or control of the Contractor and any of his Subcontractors or Sub-subcontractors; and

12.2.1.3 Other property at the site or adjacent thereto, including but not limited to, work of the Owner or of separate contractors, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall implement safety measures consistent with current industry standards and applicable regulations and shall promptly correct any unsafe condition identified by the Owner or A/E.

For Design-Build projects only: Safety obligations include ensuring the design complies with all applicable codes, life-safety requirements, structural capacity requirements, and other regulatory criteria governing safe occupancy and use.

12.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss, and shall indemnify the Owner and the A/E and save them harmless against all claims, penalties, actions and proceedings relating thereto or the Contractor's failure so to comply. The Contractor shall submit a site-specific safety plan prior to commencing Work and shall update the plan as conditions change.

12.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

12.2.4 When the use or storage of any hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

12.2.5 The Contractor shall promptly remedy all damage or loss to any property referred to in Sub-Articles 12.2.1.2 and 12.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Sub-Articles 12.2.1.2 and 12.2.1.3, except damage or loss attributable to the acts or omissions of the Owner or A/E or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Sub-Article 6.16. **For Design-Build projects only**: If any unsafe condition arises from a design error, omission, or conflict, the Design-Builder shall promptly correct such condition at no cost to the Owner.

12.2.6 The Contractor shall designate a responsible member of his organization at the Site whose duty shall be the prevention of accidents. This person shall be qualified as a safety supervisor by experience, training, or education and shall have the responsibility to insure and enforce safety requirements on behalf of the Contractor and shall be designated by the Contractor in writing to the Owner and the A/E.

12.2.7 The Contractor shall issue weekly safety reports to the Owner and the A/E attesting to conditions on the Site relating to safety and to actions taken. Safety reports shall identify any incidents, corrective actions taken, and outstanding safety concerns requiring attention.

12.2.8 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

12.2.9 The structure of the Project is designed to support the loads of the finished building. No provision is included for stresses or loads imposed by construction operations. If the Contractor desires to place such loads in excess of the design load shown on drawings, he shall submit drawings and calculations prepared by, and bearing the seal of a professional structural engineer of the proposed method for supporting such loads for the A/E's review and approval. No loading of any kind in excess of design loads shall be placed on any part of the building structure prior to the A/E's approval of submitted drawings and calculations. The costs of the A/E's review shall be borne by the Contractor.

12.2.10 The Contractor shall prepare a written report setting forth the circumstances and details related to any accident or occurrences involving death, bodily injury, sickness, disease, personal injury, and/or loss or injury to or destruction of tangible property. Such reports shall be forwarded promptly to the insurance carriers, the A/E and the Owner. The Contractor shall promptly provide all accident reports required by insurers or regulatory authorities and shall cooperate fully with investigations.

12.3 Emergencies: In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss and shall as promptly as conditions permit notify the insurance carriers, Owner, and A/E of the nature of the emergency and circumstances related thereto. Immediately thereafter, the Contractor shall prepare a written report setting forth in detail the action taken and describing in detail all circumstance and conditions which are related to such action. Emergency actions taken by the Contractor shall not relieve the Contractor of responsibility for defective or non-compliant Work discovered after the emergency. Emergency measures taken by the Contractor shall not constitute a basis for additional compensation unless expressly authorized in writing by the Owner.

Article 13
INSURANCE

13.1. At all times during the term of this Agreement, Contractor shall obtain and maintain in force the insurance specified below. All policies should be written with insurance companies lawfully authorized to issue insurance in the jurisdiction where the Work is located Rated at least A- VII by A.M. Best. The Contractor shall provide proof of required insurance prior to mobilizing on site, and shall not commence Work until all policies and endorsements have been approved by the Owner.

13.1.1. **Commercial General Liability Insurance**. Contractor shall obtain and maintain commercial general liability insurance covering operations by or on behalf of Contractor. Coverage must include, but not be limited to, liability arising from premises, operations, work performed by subcontractors, products-completed operations, contractual liability, and personal and advertising injury. The policy shall provide occurrence form contractual, personal injury, bodily injury, and property damage liability coverage **with limits of at least $1,000,000 per occurrence, $2,000,000 general aggregate, and limits will apply per location and per project**. The policy must by endorsement name the State of South Dakota, its officers and employees, as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity. Blanket endorsements are acceptable if they define, list, or name "additional insureds" as including any person or organization from whom the Contractor is performing operations under a written contract. For products-completed operations, Contractor agrees to continue to procure and maintain liability insurance coverage for a period of three years following the date of Substantial Completion. The commercial general liability carrier must by endorsement waive subrogation rights against the State of South Dakota, its officers and employees. The State of South Dakota, its officers and employees, do not hereby waive sovereign immunity for discretionary conduct as provided by law.

13.1.2. **Business Automobile Liability Insurance**. Contractor shall maintain business automobile liability insurance or equivalent form coverage for bodily injury and property damage arising from the use or operation of any owned, non-owned, or hired automobiles, trucks, or trailers. The coverage shall be as broad as that found in the standard comprehensive automobile policy **with limits of not less than $1,000,000 for each accident, combined single limit**. The policy must by endorsement name the State of South Dakota, its officers and employees, as additional insureds, but liability is limited to claims not barred by sovereign immunity. If Contractor is a motor carrier under and subject to the Motor Carrier Act of 1980, Contractor must attach to its policy an MCS-90 endorsement. Blanket endorsements are acceptable if they define, list, or name "additional insureds" as including any person or organization from whom the Contractor is performing operations under a written contract. The business automobile insurance carrier must by endorsement waive subrogation rights against the State of South Dakota, its officers and employees. The State of South Dakota, its officers and employees, do not hereby waive sovereign immunity for discretionary conduct as provided by law.

13.1.3. **Worker's Compensation Insurance**. Contractor shall procure and maintain workers' compensation insurance providing the statutory limits required by South Dakota law. In addition, Contractor shall provide Coverage B, Employer's Liability Coverage, of not less than $1,000,000 each accident, $1,000,000 disease—policy limits. The worker's compensation insurance carrier and the employer's liability insurance carrier must by endorsement waive subrogation rights against the State of South Dakota, its officers and employees.

13.1.4. **Excess Umbrella Liability Insurance**. Contractor must maintain excess liability insurance or umbrella insurance on an occurrence basis in the amount of at least $1,000,000 per occurrence, $1,000,000 general aggregate. The policy must follow form to, or otherwise be as broad as, the primary underlying commercial general liability, business automobile liability and employer's liability policies required under this Article 13. The excess or umbrella insurance policy must by endorsement name the

State of South Dakota, its officers and employees, as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity. Blanket endorsements are acceptable if they define, list, or name "additional insureds" as including any person or organization from whom the Contractor is performing operations under a written contract. The excess or umbrella liability insurance carrier must by endorsement waive subrogation rights against the State of South Dakota, its officers and employees. The State of South Dakota, its officers and employees, do not hereby waive sovereign immunity for discretionary conduct as provided by law.

13.1.5. **Subcontractor Insurance Requirements**. Contractor must require its subcontractors of every tier to obtain and maintain worker's compensation insurance, employer's liability insurance, business automobile liability insurance, and commercial general liability insurance in the same amounts and meeting the same policy and endorsement requirements as are imposed upon Contractor. The Contractor shall verify and document insurance compliance for each Subcontractor prior to allowing the Subcontractor on site.

13.1.6. **Builder's Risk**: Contractor must purchase and maintain property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Work on a replacement cost basis. The builder's risk insurance coverage must be no less than **the full value of this Agreement,** plus the value of subsequent modifications increasing the value of this Agreement for labor performed and materials and equipment supplied to the Work. The builder's risk insurance must be maintained in force until Substantial Completion of the Work, unless otherwise agreed in writing by the parties to the Agreement. The policy must include coverage upon all materials and equipment on-site, off-site, or in-transit, notwithstanding whether the Owner has paid for any or all said materials or equipment prior to Substantial Completion of the Work. This insurance must include the interests of Owner, Contractor, and Subcontractors of every tier as insureds and shall insure against loss by physical damage including, fire, explosion, theft, flood, water damage (in addition to flood), weight of snow, ice or sleet, windstorm, lightning, hail, earthquake, extended coverage, vehicle collision, vandalism, malicious mischief, and collapse. This insurance must include the interests of mortgagees, if any, as loss payees. The insurance must also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, designs, specifications, workmanship, or materials.

13.1.7. **Inland Marine/Installation Floater**. If Contractor obtains Inland Marine/Installation Floater insurance coverage to meet its property insurance requirements in this Agreement, the Contractor's Inland Marine/Installation Floater policy shall cover the full value on a replacement cost basis of all equipment, materials, and installation costs and be no less than **the full value of the Agreement**. The policy must include coverage upon all materials and equipment on-site, off-site, or in-transit and notwithstanding whether the Owner has paid for any or all said materials or equipment prior to Substantial Completion of the Work. This policy must include and provide for adequate (sub)limits to cover the full value of equipment or materials that are off-site and/or in-transit. This policy shall insure against loss by physical damage including, without duplication of coverage, fire, explosion, theft, flood, water damage (in addition to flood), weight of snow, ice or sleet, windstorm, lightning, hail, earthquake, extended coverage, vehicle collision, vandalism, malicious mischief, and collapse. This policy must include the interests of mortgagees, if any, as loss payees. The Inland Marine/Installation Floater policy must name the State of South Dakota as loss payee. To the fullest extent permitted by law, Contractor waives and must require its Inland Marine/Installation Floater carrier to waive subrogation rights against the State of South Dakota, its officers and employees. Failure to maintain required insurance shall constitute a material breach of the Contract.

13.1.8. **Proof of Insurance**. Before beginning work under this Agreement, Contractor must furnish the State with properly executed Certificates of Insurance, which shall clearly evidence all insurance required in this Agreement including naming the State, its officers and employees, as additional insureds, as provided for in this Agreement. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Contractor agrees to provide immediate notice to the State and provide a new Certificate of Insurance showing continuous coverage in the amounts required. Contractor shall furnish copies of any insurance policies if requested by the State. The Owner's approval or acceptance of Certificates of Insurance does not constitute the Owner's assumption of responsibility for the validity of any insurance policies, nor does the Owner represent that the above coverages are adequate to protect any individual/group/business, its consultants' or subcontractors' interests, and the Owner assumes no liability therefore. Failure to maintain any required insurance coverage shall constitute a material breach of the Contract and may result in immediate suspension of Work until coverage is restored. Renewal certificates shall be provided to the Owner at least ten days prior to policy expiration.

For Design-Build projects only: Professional Liability Insurance requirements are set forth in the Design-Build Special Conditions and shall apply in addition to the insurance required under this Article.

Article 14
CHANGES IN THE WORK

14.1 Change Orders: A Change Order is a written order to the Contractor signed by the Owner, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time. The Contractor shall not perform any change in the Work without prior written authorization from the Owner. Field directives, clarifications, interpretations, or verbal instructions shall not constitute authorization for a change in the Work or for any adjustment of Contract Sum or Contract Time. **For Design-Build projects only**: Any Change Order affecting the design shall conform to the Owner's Performance Criteria. The Design-Builder shall revise all affected design documents at no additional cost unless the Owner expressly approves compensation for such revision.

14.2 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. No later than the 5th day of each month, the A/E will process a written change order to include all outstanding RFPs. Unauthorized changes or extra work performed without written authorization shall not entitle the Contractor to an adjustment of Contract Sum or Time.

14.3 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

14.3.1 By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. Such lump sum proposals shall be supported by a completely detailed analysis of the proposed change subdivided into the Work of the Contractor and/or the Work of each Subcontractor and/or Sub-subcontractors involved in the proposed change, as applicable, with each such subdivision further broken down into the following elements:

14.3.1.1 Number of man-hours of labor to be performed by each trade, craft or classification of employee involved in the proposed change.

14.3.1.2 The hourly rate for each such trade, craft or classification of employee, including the appropriate wage supplement for social security, old age and unemployment contributions, and such other employee benefits as may be established by statute or by written agreement negotiated by and between organizations representing such crafts or trades and representatives of their employers.

14.3.1.3 The estimated quantity of each item or element of material and/or equipment entering into the proposed change.

14.3.1.4 The unit cost of each such item or element of material and/or equipment.

14.3.1.5 Rental of items or units of construction plant and equipment with a schedule of the period or periods of use of such item or unit in connection with the proposed change.

14.3.1.6 Rental terms and rates for each such item or unit of construction plant and equipment. Rental for equipment shall be based on the following:

14.3.1.6.1 Hourly rental rates shall be based on 80% of the applicable rates for equipment listed in the 'Green Book', latest edition, (published by the Associated Equipment Distributors, 615 West 22nd Street, Oakbrook, Illinois, 60523).

14.3.1.6.2 Hourly rental rates for equipment not listed in the 'Green Book' shall be based on 100% of the applicable rates for equipment listed in the 'Blue Book', latest edition (published by Dataquest, 1290 Ridder Park Drive, San Jose, California, 95131).

14.3.1.6.3 Hourly rental rates determined from the 'Green Book' or 'Blue Book' includes all items of cost and expense to the Contractor, including gas, oil, maintenance, repairs, insurance, and transportation to and from construction site.

14.3.1.7 Power and/or other utilities entering into the proposed change.

14.3.1.8 Rates and terms applicable to such power and/or other utilities.

14.3.1.9 Additional premiums, if applicable, for the extension of insurance and bond coverages as required herein to the proposed change.

14.3.1.10 Applicable federal, state and local taxes.

14.3.1.11 Indirect Cost and Fee computed as a percentage override applied to net cost in accordance with the provisions of this Article.

For Design-Build projects only: Substitutions or material changes proposed by the Design-Builder shall demonstrate compliance with all Performance Criteria and shall not reduce quality, performance, or durability.

14.3.2 By unit prices stated in the Contract Documents or subsequently agreed upon;

14.3.3 By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee;

The Contractor’s Change Order proposals shall be fully itemized, coordinated, and accompanied by supporting documentation sufficient for Owner review.

14.3.4 By the method provided in Sub-Article 14.3.12.

14.3.5 The Contractor shall require that the itemized analysis of each portion of the proposed change to be performed by a Subcontractor and/or Sub-subcontractor be prepared by each such Subcontractor and/or Sub-subcontractor in accordance with the format established herein. Copies of all such itemized analysis shall be appended to the Contractor's itemized analysis of the proposed change in the Work.

14.3.6 For purposes of calculating Indirect Cost and Fee in relation to Change Orders, the net cost of a proposed change in the Work shall include, and unless otherwise agreed in writing prior to the performance of the proposed change, shall be limited to the fair and reasonable estimated cost of the total of all of the individual items, elements, or components involved in proposed change in the Work (including adds and deducts) as set forth in Sub-Articles 14.3.1.1 through 14.3.1.8.

14.3.7 For each portion of a proposed net additive change in the Work to be performed directly by the Contractor, the cost to Owner shall include an increment for the Indirect Cost and Fee of the Contractor associated with such portion of proposed change of 8% of the net cost of the Work.

14.3.8 For each portion of a proposed net additive change in the Work to be performed directly by a Subcontractor, in addition to an increment or increments for Subcontractor's Indirect Cost and profit associated therewith of 8%, the cost to the Owner shall include a supplementary increment or increments for Contractor's Indirect Cost and Fee associated therewith of 6% of the net cost of the Work.

14.3.9 In computing Indirect Cost and Fee, the percentage for Indirect Cost and Fee shall be taken on basic wage only. No percentage override shall be taken on Social Security, Old Age and Unemployment contributions, contributions to Industry funds, education, and Training Funds and/or similar wage supplements, contributions or benefits.

14.3.10 Items, elements or components of changes in the Work or proposed changes which shall be classified as Indirect Cost and excluded from net cost shall include, but shall not necessarily be limited to:

14.3.10.1 All classifications of administrative, supervisory, and clerical personnel not engaged manually in the performance of the Work, including timekeepers, clerks, watchmen, and security personnel.

14.3.10.2 Miscellaneous expense, job burden, and/or other generalized categories of cost or expense.

14.3.10.3 Use of small tools and miscellaneous materials.

14.3.10.4 Insurance other than insurance coverage required herein.

The Contractor shall promptly revise and resubmit Change Order proposals that are incomplete or incorrect.

14.3.11 In changes in the Work involving both additions to and deductions in the Work, or any portion or element thereof, or the relocation or rearrangement of items, portions or elements thereof, or the substitution of any items, portions or elements thereof, such additions and deductions shall be balanced, and the Contractor's Fee computed on the same basis for deductions as well as additions. If at the request of the A/E and/or the Owner a number of unrelated changes in the Work are set forth individually, summarized and totaled in a single Change Order for reasons of administrative convenience, the amount or amounts of individual deductive changes in the Work set forth therein shall, in any event, be balanced against the amount or amounts of individual additive changes in computing the Contractor's Fee for the purpose of adding and deducting.

14.3.12 If none of the methods set forth in Sub-Articles 14.3.1, .3.2 or .3.3 is agreed upon, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Owner on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for the Contractor's Fee. In such case, and also under Sub-Articles 14.3.3 and .3.4 above, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order, at the end of each day, and will submit to the Owner or his designated representative: (a) daily time slips showing the name of each workman employed on such work, the number of hours which he is employed thereon, the character of his duties, and the wages and benefits to be paid to him and on his behalf, and (b) a memorandum of the equipment used in the performance of such Work, together with the rental claimed therefor. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the Owner, payments on account shall be made on the basis of amounts reasonably estimated by the Owner. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract sum will be the amount of the actual net cost as confirmed by the A/E and agreed to by the Owner. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance or credit for the Contractor's Fee shall be figured on the basis of the net increase, or decrease, if any, with respect to that change. Daily force-account records must be signed by the Contractor and submitted to the Owner within 24 hours.

14.4 Differing Site Conditions

14.4.1 The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the A/E of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract. Such notice shall include photographs, descriptions, and any measurements necessary to document the condition accurately.

14.4.2 The A/E shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor’s cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contract Sum shall be adjusted as provided in this Article, provided that the work has been ordered in writing by Owner and A/E as provided in Sub-Article 14.1 above. There shall be included in the adjustment to the Contract Sum under the preceding sentence a reasonable allowance for any extraordinary increase in Indirect Cost borne by the Contractor because of such additional work. The Contractor shall not disturb alleged differing conditions until directed in writing by the Owner.

14.5 Claims for Additional Cost.

14.5.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the A/E and Owner a written notice thereof within 10 days after the occurrence of the event giving rise to such claim except where claim is made in connection with deviations in Shop Drawing or Sample submittals, in which case claim shall be made in writing to the A/E concurrently with such submittals. This notice shall be given by the Contractor before proceeding to execute the work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Sub-Article 12.3. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order. Claims submitted without required documentation may be rejected without review. In firm-fixed-price competitive bidding, claims that seek to modify the pricing submitted at bid opening shall not be permitted.

14.5.2 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to Sub-Article 4.13, (2) any order by the Owner to stop the Work pursuant to Sub-Article 5.2 where the Contractor was not at fault, (3) any written order for a minor change in the Work issued pursuant to Sub-Article 14.6, or (4) any deviation in Shop Drawing or Sample submittals from the requirements of the Contract Documents, the Contractor shall make such claim as provided in Sub-Article 14.5.1.

14.6 Minor Changes in the Work: The A/E will have authority to order minor changes in the Work not involving an adjustment in the Contact Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

Article 15
UNCOVERING AND CORRECTION OF WORK

15.1 Uncovering of Work.

15.1.1 If any portion of the Work should be covered contrary to the request of the A/E or the Owner, or the requirements specifically expressed in the Contract Documents, it must, if required in writing by the A/E or the Owner, be uncovered for his observation and shall be replaced at the Contractor's expense. **For Design-Build projects only**: If uncovering is required due to a design error or omission by the Design-Builder, the Design-Builder shall bear all costs of uncovering and restoring the Work.

15.1.2 If any other portion of the Work has been covered which the A/E or the Owner has not specifically required to observe prior to being covered, the A/E or the Owner may request to see such Work and it shall be uncovered by the Contractor. If such work be found in accordance with the Construction Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such work be found not in accordance with the Construction Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner or a separate contractor as provided in Article 8, in which event the Owner shall be responsible for the payment of such costs. The Contractor shall promptly schedule and coordinate inspections requested by the Owner or A/E for uncovered Work.

15.2 Correction of Work.

15.2.1 The Contractor shall promptly correct all Work rejected by the A/E as defective or as failing to conform to the Construction Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the A/E's additional services and the Office of the State Engineer fees made necessary thereby. All corrective Work shall be performed promptly, at no cost to the Owner, and in a manner that does not delay completion of the Project. All corrective Work shall be documented with photographs and descriptions sufficient to demonstrate compliance with Contract requirements. **For Design-Build projects only**: Design corrections include revising drawings, specifications, calculations, digital models, and technical submissions necessary to correct the defective design at no cost to the Owner.

15.2.2 If, at any time after the Owner's acceptance of the fully completed Project any of the Work is found not to have been provided in conformance with the Construction Documents, or, if within one year after such acceptance any of the Work is otherwise found to be faulty or defective, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so. The Contractor shall also repair or replace any part of the Work which is damaged by the defective condition or the remedial Work. This obligation shall survive termination of the Contract, subject to the terms of any applicable statute of limitations. The Owner shall give such notice promptly after discovery of the condition. Warranty corrections shall include restoring surrounding Work damaged during repair operations.

15.2.3 The Contractor shall remove from the Site all portions of the Work which are defective or non-conforming and which have not been corrected under Sub-Articles 6.4.1, 15.2.1 and 15.2.2, unless removal is waived by the Owner. The Contractor shall not reuse or reinstall defective or non-conforming materials unless expressly approved in writing by the Owner.

15.2.4 If the Contractor fails to correct defective or non-conforming Work as provided in Sub-Articles 6.4.1, 15.2.1 and 15.2.2, the Owner may correct it in accordance with Sub-Article 5.3.

15.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the A/E, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within 10 days thereafter, the Owner may upon 10 additional days written notice sell such Work at auction or a private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the A/E's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due to the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner upon demand. The Contractor shall reimburse the Owner for all costs arising from failure to promptly correct defective Work.

15.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction removal.

15.2.7 Nothing contained in this Article shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Sub-Article 6.4 hereof. The establishment of any time period prescribed by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor liability with respect to his obligations other than specifically to correct the Work.

15.3 Acceptance of Defective or Non-Conforming Work: If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Acceptance of defective Work shall be solely at the Owner’s discretion and may include a credit, warranty extension, or other adjustment.

Article 16
TERMINATION OF THE CONTRACT

16.1 Termination by the Contractor: If the Work is stopped for a period of 90 days under an order of any court or any public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon 7 additional days written notice to the Owner and the A/E, terminate the Contract and recover from the Owner payment for all Work executed to the termination date, together with reasonable demobilization costs. The Contractor shall have no other right to terminate the Contract for any reason. The Contractor's right to terminate is strictly limited to the circumstances described herein.

16.2 Termination by the Owner.

16.2.1 If the Contractor is in default under the Contract Documents, the Owner may, without prejudice to any other right or remedy and upon written notice to the Contractor, terminate the contract. Upon termination, the Contractor shall immediately cease operations, secure the Work, and turn over all Project documents, materials, and equipment to the Owner.

Prior to termination of the Contract, the Owner shall give the Contractor and his surety 10 calendar days written notice, during which the Contractor and/or his surety may rectify the cause of the termination. If rectified to the satisfaction of the Owner within said 10 days, the Owner may rescind its notice of termination. If not rectified, the termination for cause shall become effective at the end of the 10 day notice period. In the alternative, the Owner may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor and its surety that the causes of termination will be remedied in a time and manner which the Owner finds acceptable. If at any time more than 10 days after the notice of termination, the Owner determines that the Contractor or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the Owner may immediately terminate the Contract for cause by giving written notice to the Contractor and its surety. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.

Notice of termination, whether initial or given after a period of postponement, may be served upon the Contractor and the surety by mail or any other means at their last known places of business in South Dakota or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within 3 days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.

Upon termination of the Contract, the Owner shall take possession of the premises and of all materials, tools, appliances, equipment, and other facilities on the Project, wherever stored, and may finish the Work by whatever method he may deem expedient. The Contractor shall assign Subcontracts to the Owner or to a designated substitute contractor promptly upon request. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished and the Owner has determined its damages owing to the Contractor's default.

The Contractor shall preserve all Project documentation, including electronic files, and shall provide full access to such documentation upon request by the Owner.

For Design-Build projects only: Failure to timely perform design services, failure to deliver required design submissions, failure to retain licensed design professionals, or failure of design documents to meet Performance Criteria shall constitute grounds for termination for cause.

16.2.2 If the costs of finishing the Work, including compensation for the A/E's and Office of the State Engineer's additional services made necessary by the Contractor's default, and all other damages suffered by the Owner on account of the Contractor's default, exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner, and this obligation for payment shall survive the termination of the Contract. If the costs of finishing the Work are less than the unpaid portion of the contract Sum, the Owner shall pay the unpaid balance of any amount properly owing to the Contractor for all Work executed to the date of termination, less actual damages. The Owner will not be obligated to pay any further amount on account of Direct Cost, Indirect Cost or Fee. The Contractor shall not be entitled to overhead, profit, or damages on unperformed Work following termination for cause.

16.2.3 If it should be judicially determined that the Owner improperly terminated this Contract for cause, then the termination shall be deemed to be a termination for the convenience of the Owner. If termination for cause is converted to termination for convenience, the Contractor shall be entitled only to amounts permitted under Sub-Article 16.3.

16.3 Termination for Convenience.

16.3.1 The Owner may terminate this Contract at any time without cause, in whole or in part, upon giving the Contractor notice of such termination. Upon such termination, the Contractor shall immediately cease Work and remove from the project site all of its labor forces and such of its materials as Owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as Owner may require to assign to the Owner the Contractor's interest in all Subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:

(1) All amounts then otherwise due under the terms of this Contract,

(2) Amounts due for work performed subsequent to the latest Request for Payment through the date of termination,

(3) Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination. The Contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the foregoing, Owner shall have no further obligations to Contractor of any nature.

The Contractor shall not recover lost profits or consequential damages due to termination for convenience.

The Contractor shall preserve all Project documentation, including electronic files, and shall provide full access to such documentation upon request by the Owner.

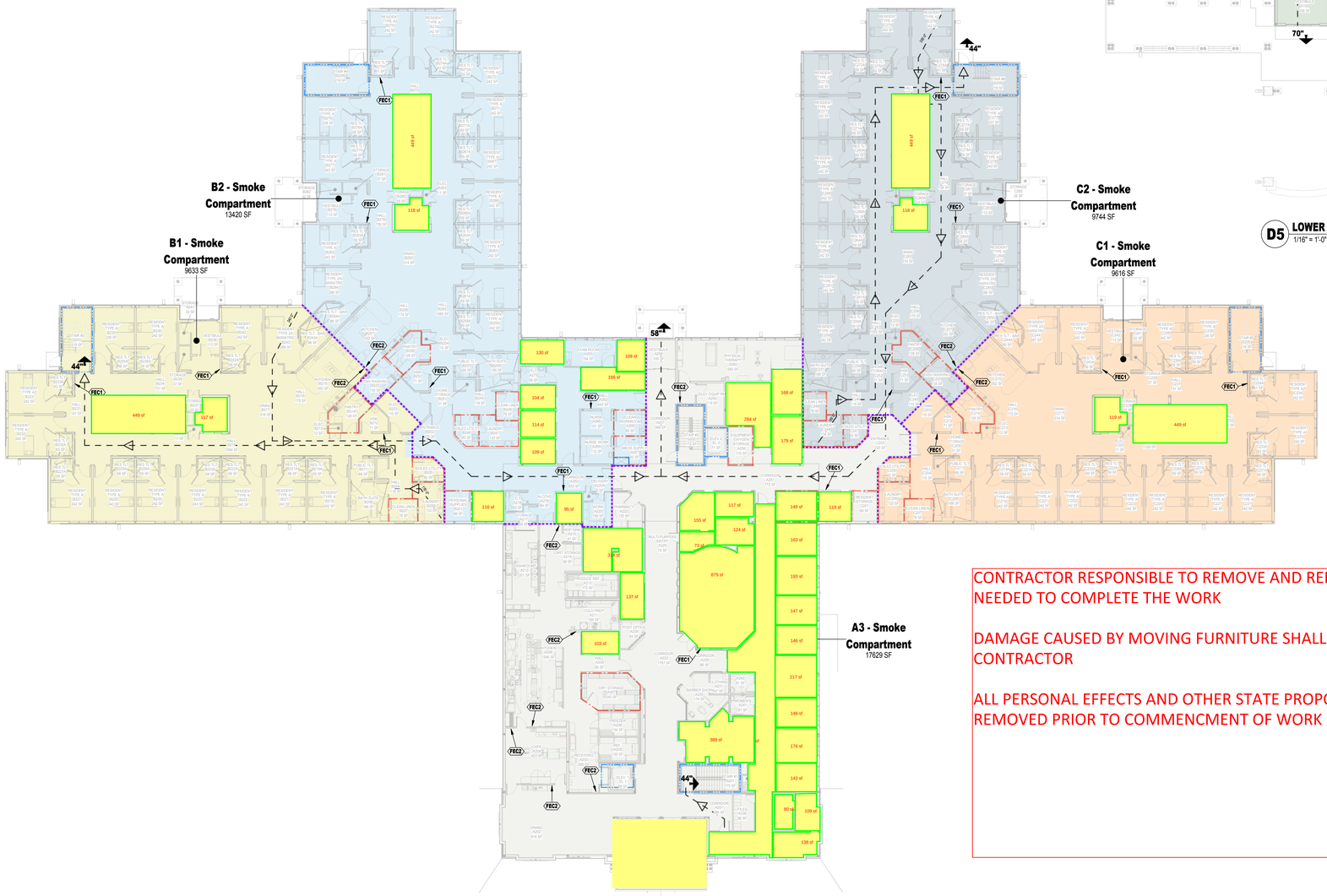
For Design-Build projects only: Upon termination for convenience, the Owner shall receive ownership of all design work, drawings, specifications, calculations, models, and digital files prepared to the date of termination, without additional cost.

16.3.2 In no event shall termination for the convenience of the Owner terminate the obligations of the Contractor's surety on its payment and performance bonds. Upon receipt of notice of termination, the Contractor shall immediately stop all Work and protect all completed and in-progress Work until directed otherwise.

MJF Replace Flooring
State Veteran's Home
Hot Springs, SD
OSE# N1826--02X/SWMR

OCTOBER 30, 2026





D5 LOWER LEVEL CODE PLAN
1/16" = 1'-0"

A1 MAIN LEVEL CODE PLAN
1/16" = 1'-0"

CONTRACTOR RESPONSIBLE TO REMOVE AND REPLACE FURNITURE AS NEEDED TO COMPLETE THE WORK

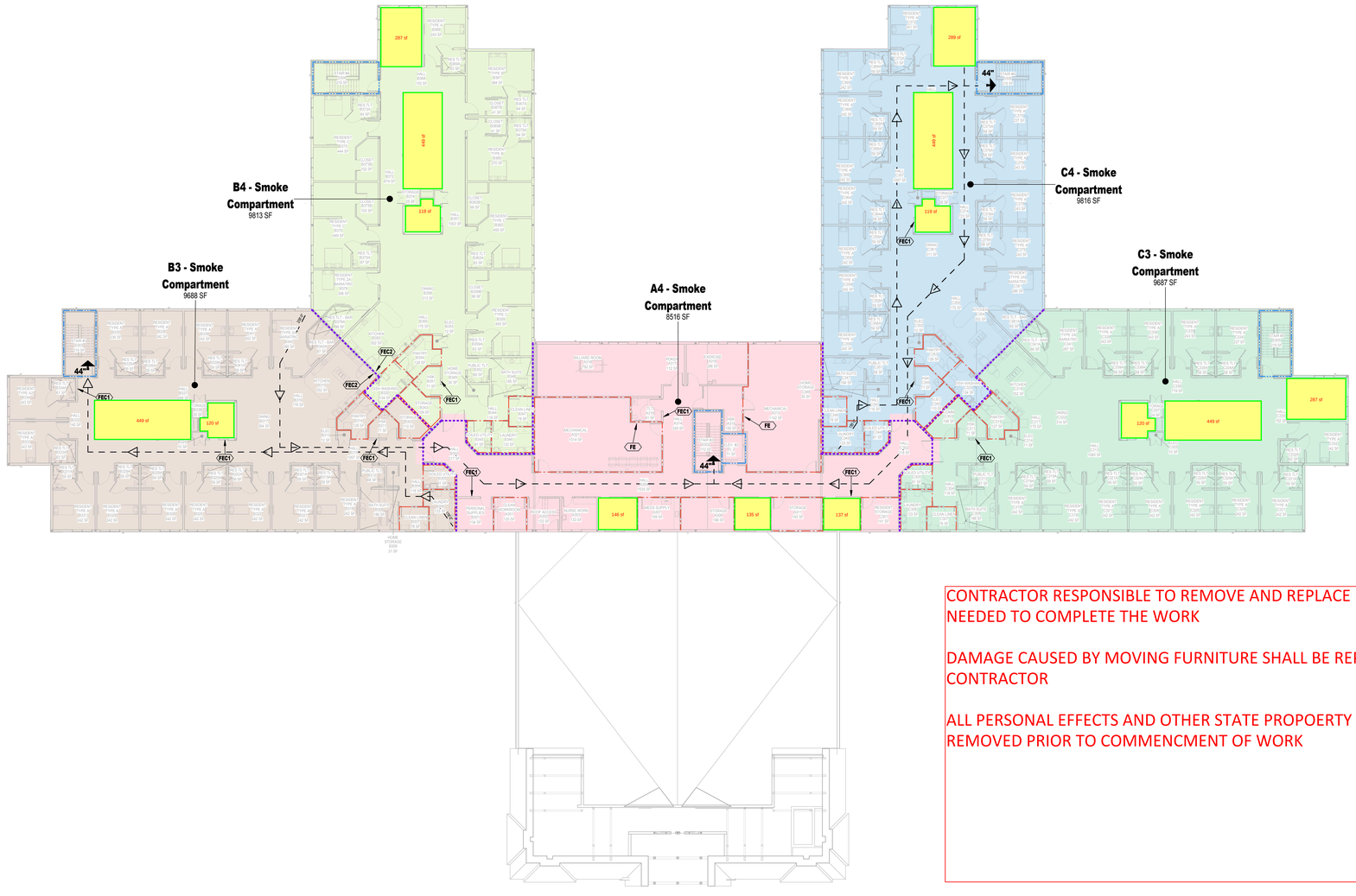
DAMAGE CAUSED BY MOVING FURNITURE SHALL BE REPAIRED BY THE CONTRACTOR

ALL PERSONAL EFFECTS AND OTHER STATE PROPOERTY WILL BE REMOVED PRIOR TO COMMENCMENT OF WORK

LIFE SAFETY LEGEND

- 1 HOUR FIRE PARTITION
- 1 HOUR FIRE BARRIER
- 2 HOUR FIRE BARRIER
- 1 HOUR SMOKE BARRIER
- SMOKE PARTITION
- FIRE EXTINGUISHER — FE
- FIRE EXTINGUISHER CABINET — FEC
- TRAVEL DISTANCE — 25'-0"
- EXIT/DOOR WIDTH — 36"

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CONTRACTOR RESPONSIBLE TO REMOVE AND REPLACE FURNITURE AS NEEDED TO COMPLETE THE WORK

DAMAGE CAUSED BY MOVING FURNITURE SHALL BE REPAIRED BY THE CONTRACTOR

ALL PERSONAL EFFECTS AND OTHER STATE PROPOERTY WILL BE REMOVED PRIOR TO COMMENCMENT OF WORK

A1 **UPPER LEVEL CODE PLAN**
1/16" = 1'-0"

LIFE SAFETY LEGEND

- 1 HOUR FIRE PARTITION
- 1 HOUR FIRE BARRIER
- 2 HOUR FIRE BARRIER
- 1 HOUR SMOKE BARRIER
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- FIRE EXTINGUISHER — FE
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2	449	sf	Yellow	"
1	517	sf	Yellow	"
1	879	sf	Yellow	"
SubTotal	**14,157**	**sf**		
1	1,621	sf	Orange	12" Vinyl squares
TOTAL	**15,778**	**sf**		Estimated @ $10/sf

MJF Replace Flooring
State Veteran's Home
Hot Springs, SD
OSE# N1826--02X

MEASUREMENTS ARE ESTIMATED.

CONTRACTOR TO FIELD VERIFY MEASUREMENTS PRIOR TO BID.

REFER TO PLAN SHEETS FOR AREAS TO BE INCLUDED IN THE PROJECT.

MJF Replace Flooring
State Veteran's Home
Hot Springs, SD
OSE# N1826--02X/SWMR

Specifications are extracted from the original project. All references to OSE# N1810--02X shall be replaced with N1826--02X/SWMR.

SECTION 096513 - RESILIENT BASE AND ACCESSORIES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

A. Section Includes:

1. Resilient base.
2. Resilient stair accessories.
3. Resilient molding accessories.

1.3 ACTION SUBMITTALS

A. Product Data: For each type of product.

B. LEED Submittals:

1. Product Data for Credit IEQ 4.1: For adhesives, documentation including printed statement of VOC content.
2. Product Data for Credit IEQ 4.3: For adhesives, documentation including printed statement of VOC content.
3. Product Data for Credit(s) MR 3: For products having recycled content, documentation indicating percentages by weight of postconsumer and preconsumer recycled content.

    a. Include statement indicating costs for each product having recycled content.

C. Samples: For each exposed product and for each color and texture specified, not less than 12 inches (300 mm) long.

D. Samples for Initial Selection: For each type of product indicated.

E. Samples for Verification: For each type of product indicated and for each color, texture, and pattern required in manufacturer's standard-size Samples, but not less than 12 inches (300 mm) long.

F. Product Schedule: For resilient base and accessory products. Use same designations indicated on Drawings.

1.4 MAINTENANCE MATERIAL SUBMITTALS

A. Furnish extra materials that match products installed and that are packaged with protective covering for storage and identified with labels describing contents.

1. Furnish not less than 10 linear feet (3 linear m) for every 500 linear feet (150 linear m) or fraction thereof, of each type, color, pattern, and size of resilient product installed.

1.5 DELIVERY, STORAGE, AND HANDLING

A. Store resilient products and installation materials in dry spaces protected from the weather, with ambient temperatures maintained within range recommended by manufacturer, but not less than 50 deg F (10 deg C) or more than 90 deg F (32 deg C).

1.6 FIELD CONDITIONS

A. Maintain ambient temperatures within range recommended by manufacturer, but not less than 70 deg F (21 deg C) or more than 95 deg F (35 deg C), in spaces to receive resilient products during the following time periods:

1. 48 hours before installation.
2. During installation.
3. 48 hours after installation.

B. After installation and until Substantial Completion, maintain ambient temperatures within range recommended by manufacturer, but not less than 55 deg F (13 deg C) or more than 95 deg F (35 deg C).

C. Install resilient products after other finishing operations, including painting, have been completed.

PART 2 - PRODUCTS

2.1 PERFORMANCE REQUIREMENTS

A. FloorScore Compliance: Resilient base and stair accessories shall comply with requirements of FloorScore certification.

B. Low-Emitting Materials: Flooring system shall comply with the testing and product requirements of the California Department of Public Health's "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions from Indoor Sources Using Environmental Chambers."

2.2 THERMOPLASTIC-RUBBER BASE – RB-1 - RB-3

A. Manufacturers: Subject to compliance with requirements, provide products by one of the following:

1. Armstrong World Industries, Inc.
2. Johnsonite; A Tarkett Company.
3. Roppe Corporation, USA.

B. Product Standard: ASTM F 1861, Type TP (rubber, thermoplastic).

1. Group: I (solid, homogeneous).
2. Style and Location:

a. Style A, Straight: Provide in areas with carpet.
b. Style B, Cove: Provide in areas with resilient flooring.

C. Thickness: 0.125 inch (3.2 mm).

D. Height: 4 inches (102 mm).

E. Lengths: Coils in manufacturer's standard length.

F. Outside Corners: Job formed.

G. Inside Corners: Job formed.

H. Colors: As indicated on Finish Key.

2.3 THERMOPLASTIC-RUBBER BASE – PRB-1 and PRB-2 - **ALTERNATE #11**

A. Manufacturers: Subject to compliance with requirements, provide products by one of the following:

1. Armstrong World Industries, Inc.
2. Johnsonite; A Tarkett Company.
3. Roppe Corporation, USA.

B. Product Standard: ASTM F 1861, Type TP (rubber, thermoplastic).

1. Group: I (solid, homogeneous).
2. Style and Location:

a. Style D, Sculptured: Provide in areas indicated.

1) Profile: As indicated.

C. Thickness: 0.25

D. Height: 4.25 inches.

E. Lengths: Manufacturer's standard length.

F. Outside Corners: Job formed.

G. Inside Corners: Job formed.

H. Colors: As indicated on Finish Key.

2.4 RUBBER STAIR ACCESSORIES

A. Fire-Test-Response Characteristics: As determined by testing identical products according to ASTM E 648 or NFPA 253 by a qualified testing agency.

1. Critical Radiant Flux Classification: Class I, not less than 0.45 W/sq. cm.

B. Manufacturers: Subject to compliance with requirements, provide products by one of the following:

1. Armstrong World Industries, Inc.
2. Johnsonite; A Tarkett Company.
3. Roppe Corporation, USA.

C. Stair Treads: ASTM F 2169.

1. Type: TS (rubber, vulcanized thermoset).
2. Class: 2 (pattern; embossed, grooved, or ribbed).
3. Group: 1 (embedded abrasive strips).
4. Nosing Style: Square.
5. Nosing Height: 2 inches (51 mm).
6. Thickness: 1/4 inch (6 mm) and tapered to back edge.
7. Size: Lengths and depths to fit each stair tread in one piece or, for treads exceeding maximum lengths manufactured, in equal-length units.
8. Integral Risers: Smooth, flat; in height that fully covers substrate.

D. Stringers: Height and length after cutting to fit risers and treads and to cover stair stringers; produced by same manufacturer as treads and recommended by manufacturer for installation with treads.

1. Thickness: 0.125 inch (3.2 mm).

E. Landing Tile: Matching treads; produced by same manufacturer as treads and recommended by manufacturer for installation with treads.

F. Locations: Provide rubber stair accessories in areas indicated.

G. Colors and Patterns: As indicated on Finish Key.

2.5 VINYL MOLDING ACCESSORY

A. Manufacturers: Subject to compliance with requirements, provide products by one of the following:

1. Armstrong World Industries, Inc.
2. Johnsonite; A Tarkett Company.
3. Roppe Corporation, USA.
4. <Insert manufacturer's name>.

B. Description: Vinyl nosing for carpet] [nosing for resilient flooring, reducer strip for resilient flooring, joiner for tile and carpet and transition strips.

C. Profile and Dimensions: As indicated.

D. Locations: Provide vinyl molding accessories in areas indicated.

E. Colors and Patterns: As indicated on Finish Key.

2.6 INSTALLATION MATERIALS

A. Trowelable Leveling and Patching Compounds: Latex-modified, portland cement based or blended hydraulic-cement-based formulation provided or approved by resilient-product manufacturer for applications indicated.

B. Adhesives: Water-resistant type recommended by resilient-product manufacturer for resilient products and substrate conditions indicated.

1. Adhesives shall have a VOC content of 50 g/L or less except that adhesive for rubber stair treads shall have a VOC content of 60 g/L or less.
2. Adhesives shall comply with the testing and product requirements of the California Department of Public Health's "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions from Indoor Sources Using Environmental Chambers."

C. Stair-Tread Nose Filler: Two-part epoxy compound recommended by resilient stair-tread manufacturer to fill nosing substrates that do not conform to tread contours.

D. Metal Edge Strips: Extruded aluminum with mill finish of width shown, of height required to protect exposed edges of flooring, and in maximum available lengths to minimize running joints.

PART 3 - EXECUTION

3.1 EXAMINATION

A. Examine substrates, with Installer present, for compliance with requirements for maximum moisture content and other conditions affecting performance of the Work.

1. Verify that finishes of substrates comply with tolerances and other requirements specified in other Sections and that substrates are free of cracks, ridges, depressions, scale, and foreign deposits that might interfere with adhesion of resilient products.

B. Proceed with installation only after unsatisfactory conditions have been corrected.

1. Installation of resilient products indicates acceptance of surfaces and conditions.

3.2 PREPARATION

A. Prepare substrates according to manufacturer's written instructions to ensure adhesion of resilient products.

B. Concrete Substrates for Resilient Stair Accessories: Prepare horizontal surfaces according to ASTM F 710.

1. Verify that substrates are dry and free of curing compounds, sealers, and hardeners.
2. Remove substrate coatings and other substances that are incompatible with adhesives and that contain soap, wax, oil, or silicone, using mechanical methods recommended by manufacturer. Do not use solvents.
3. Alkalinity and Adhesion Testing: Perform tests recommended by manufacturer. Proceed with installation only after substrate alkalinity falls within range on pH scale recommended by manufacturer in writing, but not less than 5 or more than 9 pH.
4. Moisture Testing: Proceed with installation only after substrates pass testing according to manufacturer's written recommendations, but not less stringent than the following:

    a. Perform anhydrous calcium chloride test according to ASTM F 1869. Proceed with installation only after substrates have maximum moisture-vapor-emission rate of 3 lb of water/1000 sq. ft. (1.36 kg of water/92.9 sq. m) in 24 hours.
    b. Perform relative humidity test using in situ probes according to ASTM F 2170. Proceed with installation only after substrates have maximum 75 percent relative humidity level.

C. Fill cracks, holes, and depressions in substrates with trowelable leveling and patching compound; remove bumps and ridges to produce a uniform and smooth substrate.

D. Do not install resilient products until they are the same temperature as the space where they are to be installed.

1. At least 48 hours in advance of installation, move resilient products and installation materials into spaces where they will be installed.

E. Immediately before installation, sweep and vacuum clean substrates to be covered by resilient products.

3.3 RESILIENT BASE INSTALLATION

A. Comply with manufacturer's written instructions for installing resilient base.

B. Apply resilient base to walls, columns, pilasters, casework and cabinets in toe spaces, and other permanent fixtures in rooms and areas where base is required.

C. Install resilient base in lengths as long as practical without gaps at seams and with tops of adjacent pieces aligned.

D. Tightly adhere resilient base to substrate throughout length of each piece, with base in continuous contact with horizontal and vertical substrates.

E. Do not stretch resilient base during installation.

F. On masonry surfaces or other similar irregular substrates, fill voids along top edge of resilient base with manufacturer's recommended adhesive filler material.

G. Preformed Corners: Install preformed corners before installing straight pieces.

H. Job-Formed Corners:

1. Outside Corners: Use straight pieces of maximum lengths possible and form with returns not less than 3 inches (76 mm) in length.

    a. Form without producing discoloration (whitening) at bends.

2. Inside Corners: Use straight pieces of maximum lengths possible and form with returns not less than 3 inches (76 mm) in length.

    a. Miter or cope corners to minimize open joints.

3.4 RESILIENT ACCESSORY INSTALLATION

A. Comply with manufacturer's written instructions for installing resilient accessories.

B. Resilient Stair Accessories:

1. Use stair-tread-nose filler to fill nosing substrates that do not conform to tread contours.
2. Tightly adhere to substrates throughout length of each piece.
3. For treads installed as separate, equal-length units, install to produce a flush joint between units.

C. Resilient Molding Accessories: Butt to adjacent materials and tightly adhere to substrates throughout length of each piece. Install reducer strips at edges of floor covering that would otherwise be exposed.

3.5 CLEANING AND PROTECTION

A. Comply with manufacturer's written instructions for cleaning and protecting resilient products.

B. Perform the following operations immediately after completing resilient-product installation:

1. Remove adhesive and other blemishes from exposed surfaces.
2. Sweep and vacuum horizontal surfaces thoroughly.
3. Damp-mop horizontal surfaces to remove marks and soil.

C. Protect resilient products from mars, marks, indentations, and other damage from construction operations and placement of equipment and fixtures during remainder of construction period.

D. Cover resilient products subject to wear and foot traffic until Substantial Completion.

END OF SECTION 096513

Original specification from the construction of MJF

SECTION 096519 - RESILIENT TILE FLOORING

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

A. Section Includes:

1. Solid vinyl floor tile.
2. Rubber floor tile.
3. Vinyl composition floor tile.

1.3 ACTION SUBMITTALS

A. Product Data: For each type of product.

B. LEED Submittals:

1. Product Data for Credit IEQ 4.1: For adhesives, sealants and chemical-bonding compounds, documentation including printed statement of VOC content.
2. Product Data for Credit IEQ 4.3: For adhesives and chemical-bonding compounds, documentation including printed statement of VOC content.
3. Product Data for Credit IEQ 4.3: For resilient tile flooring, documentation from an independent testing agency indicating compliance with the FloorScore standard.

4. Product Data for Credit MR 3: For products having recycled content, documentation indicating percentages by weight of postconsumer and preconsumer recycled content. Include total weight of product installed. Include statement indicating costs for each product having recycled content.

C. Shop Drawings: For each type of floor tile. Include floor tile layouts, edges, columns, doorways, enclosing partitions, built-in furniture, cabinets, and cutouts.

1. Show details of special patterns.

D. Samples for Initial Selection: For each type of floor tile indicated.

E. Samples for Verification: Full-size units of each color and pattern of floor tile required.

1. For heat-welding bead, manufacturer's standard-size Samples, but not less than 9 inches (230 mm) long, of each color required.

1.4 CLOSEOUT SUBMITTALS

A. Maintenance Data: For each type of floor tile to include in maintenance manuals.

1.5 MAINTENANCE MATERIAL SUBMITTALS

A. Furnish extra materials that match products installed and that are packaged with protective covering for storage and identified with labels describing contents.

1. Floor Tile: Furnish one box for every 50 boxes or fraction thereof, of each type, color, and pattern of floor tile installed.

1.6 QUALITY ASSURANCE

A. Installer Qualifications: A qualified installer who employs workers for this Project who are competent in techniques required by manufacturer for floor tile installation and seaming method indicated.

1. Engage an installer who employs workers for this Project who are trained or certified by floor tile manufacturer for installation techniques required.

B. Mockups: Build mockups to verify selections made under Sample submittals and to demonstrate aesthetic effects and set quality standards for materials and execution.

1. Approval of mockups does not constitute approval of deviations from the Contract Documents contained in mockups unless Architect specifically approves such deviations in writing.
2. Subject to compliance with requirements, approved mockups may become part of the completed Work if undisturbed at time of Substantial Completion.

1.7 DELIVERY, STORAGE, AND HANDLING

A. Store floor tile and installation materials in dry spaces protected from the weather, with ambient temperatures maintained within range recommended by manufacturer, but not less than 50 deg F (10 deg C) or more than 90 deg F (32 deg C). Store floor tiles on flat surfaces.

1.8 FIELD CONDITIONS

A. Maintain ambient temperatures within range recommended by manufacturer, but not less than 70 deg F (21 deg C) or more than 95 deg F (35 deg C), in spaces to receive floor tile during the following time periods:

1. 48 hours before installation.

2. During installation.
3. 48 hours after installation.

B. After installation and until Substantial Completion, maintain ambient temperatures within range recommended by manufacturer, but not less than 55 deg F (13 deg C) or more than 95 deg F (35 deg C).

C. Close spaces to traffic during floor tile installation.

D. Close spaces to traffic for 48 hours after floor tile installation.

E. Install floor tile after other finishing operations, including painting, have been completed.

PART 2 - PRODUCTS

2.1 PERFORMANCE REQUIREMENTS

A. Fire-Test-Response Characteristics: For resilient tile flooring, as determined by testing identical products according to ASTM E 648 or NFPA 253 by a qualified testing agency.

1. Critical Radiant Flux Classification: Class I, not less than 0.45 W/sq. cm.

B. FloorScore Compliance: Resilient tile flooring shall comply with requirements of FloorScore certification.

C. Low-Emitting Materials: Flooring system shall comply with the testing and product requirements of the California Department of Public Health's "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions from Indoor Sources Using Environmental Chambers."

2.2 SOLID VINYL FLOOR TILE – SVT-1 – SVT-9

A. Products: Subject to compliance with requirements, provide one of the following:

1. Amtico International Inc;.
2. Armstrong World Industries, Inc;.
3. Centiva

B. Tile Standard: ASTM F 1700.

1. Class: Class III, printed film vinyl tile.
2. Type: B, embossed surface.

C. Thickness: 0.080 inch (2.0 mm).

D. Size: 3 by 36 inches (76 by 914 mm)

E. Seamless-Installation Method: Chemically bonded.

F. Colors and Patterns: As indicated on Finish Key.

2.3 RUBBER FLOOR TILE – RFT-1 – RFT-2

A. Products: Subject to compliance with requirements, provide one of the following:

1. Johnsonite; A Tarkett Company.
2. Mannington Mills, Inc.
3. Roppe Corporation, USA.

B. Tile Standard: ASTM F 1344, Class I-A, homogeneous rubber tile, solid color.

C. Hardness: Manufacturer's standard hardness, measured using Shore, Type A durometer per ASTM D 2240.

D. Wearing Surface: Textured.

1. Molded-Pattern Figure: As indicated on Finish Key.

E. Thickness: 0.125 inch (3.2 mm).

F. Size: 24 by 24 inches (610 by 610 mm).

G. Seamless-Installation Method: Chemically bonded.

H. Colors and Patterns: As indicated on Finish Key.

2.4 VINYL COMPOSITION FLOOR TILE – VCT1

A. Products: Subject to compliance with requirements, provide one of the following:

1. Armstrong World Industries, Inc.
2. Congoleum Corporation.
3. Mannington Mills, Inc.

B. Tile Standard: ASTM F 1066, Class 1, solid-color tile.

C. Wearing Surface: Smooth.

D. Thickness: 0.125 inch (3.2 mm).

E. Size: 12 by 12 inches (305 by 305 mm).

F. Colors and Patterns: As indicated on Finish Key.

2.5 INSTALLATION MATERIALS

A. Trowelable Leveling and Patching Compounds: Latex-modified, portland cement based or blended hydraulic-cement-based formulation provided or approved by floor tile manufacturer for applications indicated.

B. Adhesives: Water-resistant type recommended by floor tile and adhesive manufacturers to suit floor tile and substrate conditions indicated.

1. Adhesives shall comply with the following limits for VOC content:

a. Vinyl Composition Tile Adhesives: 50 g/L or less.
b. Rubber Floor Adhesives: 60 g/L or less.

2. Adhesives shall comply with the testing and product requirements of the California Department of Public Health's "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions from Indoor Sources Using Environmental Chambers."

C. Seamless-Installation Accessories:

1. Heat-Welding Bead: Manufacturer's solid-strand product for heat welding seams.

a. Color: As selected by Architect from manufacturer's full range to Match floor tile.

2. Chemical-Bonding Compound: Manufacturer's product for chemically bonding seams.

a. Bonding compound shall have a VOC content of 510 g/L or less.
b. Bonding compound shall comply with the testing and product requirements of the California Department of Public Health's "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions from Indoor Sources Using Environmental Chambers."

D. Sealers and Finish Coats for Resilient Terrazzo Floor Tile: Products recommended by floor tile manufacturer for resilient terrazzo floor tile.

PART 3 - EXECUTION

3.1 EXAMINATION

A. Examine substrates, with Installer present, for compliance with requirements for maximum moisture content and other conditions affecting performance of the Work.

1. Verify that finishes of substrates comply with tolerances and other requirements specified in other Sections and that substrates are free of cracks, ridges, depressions, scale, and foreign deposits that might interfere with adhesion of floor tile.

B. Proceed with installation only after unsatisfactory conditions have been corrected.

3.2 PREPARATION

A. Prepare substrates according to floor tile manufacturer's written instructions to ensure adhesion of resilient products.

B. Concrete Substrates: Prepare according to ASTM F 710.

1. Verify that substrates are dry and free of curing compounds, sealers, and hardeners.
2. Remove substrate coatings and other substances that are incompatible with adhesives and that contain soap, wax, oil, or silicone, using mechanical methods recommended by floor tile manufacturer. Do not use solvents.
3. Alkalinity and Adhesion Testing: Perform tests recommended by floor tile manufacturer. Proceed with installation only after substrate alkalinity falls within range on pH scale recommended by manufacturer in writing, but not less than 5 or more than 9 pH.
4. Moisture Testing: Proceed with installation only after substrates pass testing according to floor tile manufacturer's written recommendations, but not less stringent than the following:

    a. Perform anhydrous calcium chloride test according to ASTM F 1869. Proceed with installation only after substrates have maximum moisture-vapor-emission rate of 3 lb of water/1000 sq. ft. (1.36 kg of water/92.9 sq. m) in 24 hours.
    b. Perform relative humidity test using in situ probes according to ASTM F 2170. Proceed with installation only after substrates have a maximum 75percent relative humidity level.

C. Fill cracks, holes, and depressions in substrates with trowelable leveling and patching compound; remove bumps and ridges to produce a uniform and smooth substrate.

D. Do not install floor tiles until they are the same temperature as the space where they are to be installed.

1. At least 48 hours in advance of installation, move resilient floor tile and installation materials into spaces where they will be installed.

E. Immediately before installation, sweep and vacuum clean substrates to be covered by resilient floor tile.

3.3 FLOOR TILE INSTALLATION

A. Comply with manufacturer's written instructions for installing floor tile.

B. Lay out floor tiles from center marks established with principal walls, discounting minor offsets, so tiles at opposite edges of room are of equal width. Adjust as necessary to avoid using cut widths that equal less than one-half tile at perimeter.

1. Lay tiles square with room axis.

C. Match floor tiles for color and pattern by selecting tiles from cartons in the same sequence as manufactured and packaged, if so numbered. Discard broken, cracked, chipped, or deformed tiles.

1. Lay tiles in pattern of colors and sizes indicated.

D. Scribe, cut, and fit floor tiles to butt neatly and tightly to vertical surfaces and permanent fixtures including built-in furniture, cabinets, pipes, outlets, and door frames.

E. Extend floor tiles into toe spaces, door reveals, closets, and similar openings. Extend floor tiles to center of door openings.

F. Maintain reference markers, holes, and openings that are in place or marked for future cutting by repeating on floor tiles as marked on substrates. Use chalk or other nonpermanent marking device.

G. Install floor tiles on covers for telephone and electrical ducts, building expansion-joint covers, and similar items in finished floor areas. Maintain overall continuity of color and pattern between pieces of tile installed on covers and adjoining tiles. Tightly adhere tile edges to substrates that abut covers and to cover perimeters.

H. Adhere floor tiles to flooring substrates using a full spread of adhesive applied to substrate to produce a completed installation without open cracks, voids, raising and puckering at joints, telegraphing of adhesive spreader marks, and other surface imperfections.

I. Seamless Installation:

1. Chemically Bonded Seams: Bond seams with chemical-bonding compound to permanently fuse sections into a seamless flooring. Prepare seams and apply compound to produce tightly fitted seams without gaps, overlays, or excess bonding compound on flooring surfaces.

3.4 CLEANING AND PROTECTION

A. Comply with manufacturer's written instructions for cleaning and protecting floor tile.

B. Perform the following operations immediately after completing floor tile installation:

1. Remove adhesive and other blemishes from exposed surfaces.
2. Sweep and vacuum surfaces thoroughly.
3. Damp-mop surfaces to remove marks and soil.

C. Protect floor tile from mars, marks, indentations, and other damage from construction operations and placement of equipment and fixtures during remainder of construction period.

D. Joint Sealant: Apply sealant to resilient terrazzo floor tile perimeter and around columns, at door frames, and at other joints and penetrations.

E. Cover floor tile until Substantial Completion.

END OF SECTION 096519

Sample of existing planks

This Side Up • Do Not Stand Carton On End
Este Lado Arriba • No se pare del cartón en extremo
Ce Côté Vers Le Haut • Ne montez pas le carton sur la fin

Acclimate product and install between 65° and 85° F
Aclimatar el producto e instálelo entre 18° y 29° C
Laisser le produit s'acclimater et l'installer à une température entre 18° et 29° C

Congoleum®

CONTEMPORARY AMERICAN FLOORING

Visit **www.congoleum.com** for complete installation instructions
Visite **www.congoleum.com** para ver las instrucciones completas de instalación
Visitez le site **www.congoleum.com** pour obtenir des instruc

Size / Tamaño / Grandeur: 6" x 48" (1

Congoleum

Sample of existing planks

Item # UR130		Square Feet 36	Weight (lbs.) 42
CGL-127412	Size/Dimension 6"x 48"	No. Of Pieces 18	Production Run # 04/28/15	Shade Lot C

0 88699 10363 9